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No. 6

In the Supreme Court of the United States

OCTOBER TERM, 1950

EDWARD L. FOGARTY, AS TRUSTEE IN BANKRUPTCY
OF THE INLAND WATERWAYS, INC., PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT
OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE UNITED STATES

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OPINIONS BELOW

The opinion of the United States District Court for the District of Minnesota, Fifth Division (R. 17-29), is reported at 80 F. Supp. 90. The opinion of the United States Court of Appeals for the Eighth Circuit (R. 36-45) is reported at 176 F. 2d 599.

JURISDICTION

The judgment of the Court of Appeals was entered on August 24, 1949 (R. 46). By order of Mr. Justice Clark, dated November 22, 1949, the time for filing a petition for a writ of certiorari was extended to and including Janu-

ary 20, 1950 (R. 48). The petition for a writ of certiorari was filed on January 20, 1950, and was granted on March 13, 1950 (R. 48). The jurisdiction of this Court rests upon 28 U. S. C. 1254 (1).

QUESTIONS PRESENTED

1. Whether a claim filed in a bankruptcy court, invoices for contract extras, and a petition for compensation for requisitioned property, constitute "written requests for relief" from "losses" within the meaning of the Lucas Act.
2. Whether requests for relief, disposed of on their merits and released for a consideration before August 14, 1945, may serve as a basis for further relief under the Lucas Act. This includes the question whether paragraph 204 of Executive Order 9786, barring consideration of Lucas Act claims on which "final action * * * was taken on or before" August 14, 1945, is valid.

STATUTE AND EXECUTIVE ORDER INVOLVED

The Lucas Act (Act of August 7, 1946, 60 Stat. 902, 41 U. S. C. 106 note), the amended version of Section 6 of the Lucas Act substituted for the original by Section 37 of the Act of June 25, 1948 (62 Stat. 869, 992), and pertinent portions of Executive Order No. 9786 (3 C. F. R., Supp. 1946, p. 165) are set forth in Appendix A, *infra*, pp. 82-89.

STATEMENT

Petitioner, as trustee in bankruptcy of Inland Waterways, Inc., brought this action under the Lucas Act (Act of August 7, 1946, 60 Stat. 902, 41 U. S. C. 106 note, Appendix A, *infra*, pp. 82-86) seeking to recover losses allegedly sustained by Inland Waterways in the performance of contracts with the Navy Department (R. 1-4). The facts, which are not in dispute, are as follows:

In 1941 and 1942, Inland Waterways, a ~~wartime~~ corporation which was organized for the purpose of obtaining war work (R. 26), contracted to build four submarine chasers and fifty plane rearming boats for the Navy Department (R. 2, 5, 9-10). On December 18, 1942, after partially performing its contracts,¹ Inland Waterways encountered financial difficulties and petitioned in the District Court for the District of Minnesota for reorganization in bankruptcy. Edward L. Fogarty, the petitioner here, was appointed trustee for the bankrupt corporation. (R. 11, 26, 37.)²

¹ Of the fifty plane rearming boats provided for in the contracts, ten were delivered. Two of the submarine chasers were delivered "with certain defects and deficiencies"; the other two were delivered after the contract delivery date "with much uncompleted and defective work which was completed and corrected at the expense of the Government" (R. 11, 26-27, 37-38).

² The court order appointing petitioner also named one Nelson J. Spencer, vice president of the bankrupt corporation, as trustee (R. 11). Less than a month later, however, the court accepted Spencer's resignation and petitioner became sole trustee (R. 12).

Little or no further progress was made in the contract work, and on March 19, 1943, the Government requisitioned the partially completed vessels and the materials which had been acquired for their construction (R. 12). At this time, a number of sums were due to the Government from the corporation, including an unpaid balance on a government-guaranteed bank loan of which the Government had purchased the outstanding principal, unliquidated advance payments, and the cost of finishing incomplete and defective work (R. 12). The corporation, on the other hand, had claims against the Government for such items as unpaid progress payments, contract changes entailing increased costs, and the value of the property requisitioned plus the cost of preserving this property until the time of requisition (R. 12). Both the Government's claims and the corporation's counterclaims were filed in the reorganization proceedings in the District Court (R. 13). In support of the corporation's claims, petitioner submitted copies of a number of unpaid invoices and of a petition to the Navy Department, dated July 23, 1943, in which he had sought compensation for the requisitioned property.³

³ See Exhibit A to petitioner's Lucas Act Claim submitted to the Navy Department, the printing of which was dispensed with by the court below (R. 32-33) and which is filed in its original form as part of the record before this Court. Portions of this material have been printed for convenient reference in Appendix B, *infra*, pp. 90-98.

On February 20, 1945, the Navy Department and the trustee, with the authorization of the District Court for the District of Minnesota sitting in bankruptcy, entered into an agreement settling finally the claims and counterclaims growing out of the bankrupt corporation's construction contracts (R. 9-15). This agreement, reciting the several claims the parties had asserted and pointing out that many of the amounts involved were unliquidated so that the balances due "were not known to the Government or to the Trustee," provided for a net payment of some \$16,000 from the Government to the trustee (R. 12-14). In the concluding article of the agreement the parties mutually released each other "from all debts, dues, sums of money, accounts, reckonings, actions, proceedings, claims and demands whatsoever in law and in equity arising under or as a result of the aforesaid contracts and transactions" (R. 14).

On February 1, 1947, petitioner filed with the Navy Department a claim under the Lueas Act seeking payment for losses claimed to total \$328,804.42 on the contracts which had been the subject of the foregoing settlement (R. 2). Attached as an exhibit to the claim was the counter-claim petitioner had presented in the bankruptcy court. This exhibit, containing the invoices and petition for compensation for requisitioned property with which petitioner had supported its assertions in the bankruptcy court, was described

as including copies "of each written request filed on or before August 14, 1945, with the war agency concerned for relief with respect to the losses claimed" (Lucas Act Claim, p. 2, par. E, Appendix B, *infra*, p. 90). In adjudicating petitioner's claim, the Navy Department's War Contracts Relief Board found that "No request for relief, written or otherwise, except to the extent that the invoices filed might be so considered, were filed by or on behalf of claimant on or before August 14, 1945" (R. 6). The Board concluded, however, that it was "unnecessary to decide whether or not the invoices filed constituted [the] written requests for relief with respect to the losses claimed" required by Section 3 of the Lucas Act. For, the Board held, even if the invoices were treated as the necessary written requests, the agreement of February 20, 1945, containing the trustee's release of all claims in law or in equity against the Government, "constituted final action on the requests made within the meaning of Public Law 657 [the Lucas Act] and Section 204 of Executive Order No. 9786 [Appendix A, *infra*, p. 87]. The War Contracts Relief Board is therefore without authority to consider the claim and denies the same" (R. 7).

Following the Navy Board's decision, petitioner brought the present action pursuant to Section 6 of the Lucas Act (R. 1). On the Government's motion, the district court entered an order granting summary judgment against petitioner (R.

16). In an opinion accompanying this order, the court held that Congress intended in the Lucas Act "to limit consideration to a request for relief from loss under the First War Powers Act which was undetermined on August 14, 1945" (R. 19). The copies of alleged requests for relief upon which petitioner relied "were merely invoices * * * and a claim for allegedly requisitioned property," and were not, the court held, the kind of "request for an amendment to a contract without consideration" contemplated by both the First War Powers Act and the Lucas Act (R. 19-20). Secondly, the court held that paragraph 204 of Executive Order 9786 (forbidding consideration of claims on which "final action" had been taken before August 14, 1945), under which the Navy Board had denied petitioner's claim, was valid and would preclude relief even if the requirement of written requests had been met (R. 20-26). As a third ground for its decision, the court, stressing the fact that it was directed by the Lucas Act to sit as a court of equity, held that the agreement of February 20, 1945, in which the trustee had for a valuable consideration released all claims against the Government, was a bar to the grant of further relief in this action (R. 26-28).

On appeal to the court below, the judgment of the district court was affirmed (R. 46). Agreeing with the district court that the documents upon which petitioner relied could "not be ac-

cepted as written requests for relief from losses * * * within the meaning of the Act" (R. 44), the court deemed it unnecessary to consider the additional bases for the district court's judgment (R. 40).

SUMMARY OF ARGUMENT

I

The purpose, reach, and wording of the Lucas Act—"An Act to authorize relief in certain cases where work, supplies, or services have been furnished for the Government under contracts during the war"—can only be understood against its background and history. The Act has its roots in the First War Powers Act, 1941, and Executive Order 9001, under which the major war procurement agencies regularly granted contractual relief, as a matter of grace, by means of contract amendments without consideration, raising prices or alleviating contract terms, when it was determined that to do so would "facilitate the prosecution of the war." As this criterion was interpreted, it authorized such relief not only where the contractor's continued production was needed for the war effort but also where fairness, equity, and the consequent encouragement or stimulation of war production required the rectification of such inevitable incidents of wartime procurement as serious (but honest) mistakes and reliance upon technically unauthorized requests or representations of Government officials. Standardized

procedures were established for passing upon contractors' applications for this type of extra-contractual aid—commonly known as "requests for relief"—and many requests were received and regularly disposed of in the period 1942-1945.

But with the surrender of Japan on August 14, 1945, and the ending of hostilities, the War Department and certain other agencies decided that they could no longer certify that such relief would "facilitate the prosecution of the war," except in the case of contractors whose production was needed for post-VJ-day procurement; as of that date these agencies automatically denied the requests of all other contractors, regardless of how long their requests for relief had been pending before VJ-day, what stage of processing the requests had reached, or the contractor's pre-VJ-day connection with, or contribution to, the war effort. Other agencies, of which the Navy was the chief, took the opposite view that the right to relief was not cut off by the ending of hostilities, and continued to process the requests on their merits.

It was this discrimination between (1) contractors whose First War Powers Act requests for relief had been processed before VJ-day and those whose applications were still pending at that time, and also between (2) Army contractors and Navy contractors, which was brought to the attention of Congress and resulted in the introduction and enactment of the Lucas Act. The

committee reports, statements of Senator Lucas, the bill's sponsor, at the hearing and on the Senate floor, and the remarks of Senator McCarran, the Committee chairman, all indicate that the bill's restricted purpose was to repeal the War Department's dictum that the ending of hostilities precluded further grants of First War Powers Act relief, and "to continue the war" for those contractors whose requests pending on VJ-day had been automatically denied without consideration of their merits; the war agencies were now to pass upon these requests as if it were still before VJ-day. This was the bill's aim when it was first introduced, as it came from the Committees, and as it was passed and approved. At no time was there any substantial indication of a broad purpose, unprecedented in our history, to guarantee all war contractors against loss, or of a Congressional desire to provide a special forum for the relitigation of all kinds of legal claims for which suit could be brought in the Court of Claims or the district courts. Congress' sole concern was with the limited class of contractors whose chance to obtain contractual *relief*, as a matter of grace, had been abruptly ended on VJ-day. The President was undoubtedly of the same view, for within two months after approving the bill, he issued presidential regulations (Executive Order 9786), called for by the Act, which admittedly embody this conception of the Act.

Proof of the Lucas Act's intimate connection with First War Powers Act discretionary relief is found not only in its history but also in its very wording and structure. Only agencies empowered to grant War Powers Act relief may grant Lucas Act relief; only contractors who filed "requests for relief"—the special designation for War Powers Act applications—before ~~VJ-day~~ can claim under the new Act; similarly, the statute characterizes awards under the new Act as "relief"; consideration must be given to all prior First War Powers Act and like relief; and, finally, the new Act's phrases "equitable claims" and "fair and equitable settlement of claims" are shorthand expressions directly referring to the unfair discrimination among certain contractors, following the ending of hostilities, which Congress desired to redress, as well as to the facts that War Powers Act relief was not demandable as of right and involved considerations of fair and honorable dealing.

II

Section 3 of the Lucas Act limits all claims under the statute "to losses with respect to which a written request for relief was filed * * * on or before August 14, 1945 * * *, and one reason why petitioner has no basis for seeking Lucas Act relief is that he cannot fulfill this express requirement. The term "request for relief" has no meaning in procurement practice apart

from the First War Powers Act, and it obviously refers to an application under that statute for contractual relief as a matter of grace. Likewise, the choice of the date "August 14, 1945", in connection with a "request for relief", is explainable only in the light of the special history and purpose we have outlined. So long as the application is one for extraordinary gratuitous relief from losses suffered in the performance of government contracts or subcontracts, no precise form is necessary. But it is plain from the Lucas Act's language and history that this pre-VJ-day filing requirement cannot be satisfied by any sort of written claim or demand for Government monies.

That, however, is just what petitioner is attempting to do. He presents as "requests for relief" from "losses" (a) his objection to the Government's claim and his counterclaim in the District Court reorganization proceeding, (b) a number of contract invoices presented to the Navy, and (c) a claim for just compensation for requisitioned property. None of these is a *request for relief*, in any sense of those words. They are simply demands for payments believed to be legally owing by the Government. Admittedly, they were never considered, or presented for consideration, as First War Powers Act relief applications. They do not differ from the thousands of contractual and non-contractual claims-as-of-right daily filed with the Gov-

ernment, and on which suit is frequently brought. The Lucas Act was certainly not designed to provide substitute tribunals for the consideration of these multitudinous legal demands. Moreover, petitioner's documents, which clearly do not "request relief," also cannot be said to involve "losses." A contractor's demands for payment made under his contract do not normally imply that he has suffered a loss, and petitioner's invoices do not refer in any way to losses (except for a loss of profits, which is unredressable under the Lucas Act). The petition for just compensation fails for the additional reason that it does not even involve a Government contract.

III

Even if the documents filed by petitioner before August 14, 1945, were "requests for relief" from "losses," as the statute prescribes, his claim is barred by the settlement agreement of February 1945, in which he received payment for, and released, these very claims. For paragraph 204 of the President's Lucas Act regulations (Executive Order 9786) provides that "no claim shall be considered if final action with respect thereto was taken on or before" August 14, 1945, and petitioner's challenge to the validity of this rule cannot stand.

A. The regulations embodied in Executive Order 9786 have a special status. The Act expressly conditions the entire process of consider-

ing, adjusting, and settling Lucas Act claims on the presidential regulations it directs to be issued. And since the Act merely authorizes relief "in certain cases"—providing only such general standards as "fair and equitable settlement"—it is clear that the President was empowered to establish not only procedural rules but also more detailed substantive standards and criteria as a precondition to the awarding of relief. Regulations of this type cannot be overturned unless plainly inconsistent with the statute. *Commissioner v. South Texas Co.*, 333 U. S. 496, 503. In addition, Executive Order 9786 has the standing accorded to contemporaneous administrative construction, and the validity of its limiting provisions, such as paragraph 204, must also be judged in the light of the traditional principle that where, as here, Congress grants private benefits doubts must be resolved for the Government and against the private claimant.

B. Against the Lucas Act's history and background, paragraph 204 is seen to be in accord, rather than "plainly inconsistent" with, the statute's purpose and terms. Congress was dealing with the limited problem of contractors whose First War Powers Act requests for relief were pending on VJ-day. It was thought equitable that all such pending requests be processed on their merits and not cut off by the ending of hostilities, as the Army and other agencies had done. There is nothing in the legislative history

suggesting that, at any point, Congress desired reopening of the great mass of First War Powers Act requests for relief which had been disposed of on their merits before VJ-day. Indeed, the history contains an express disavowal of such a purpose by the Chairman of the Senate Committee.

Nor is paragraph 204 inconsistent with the portion of Section 3 of the Act which provides that "a previous settlement under the First War Powers Act, 1941, or the Contract Settlement Act of 1944 shall not operate to preclude further relief otherwise allowable under this Act." This proviso was inserted, we believe, to cover those cases, of which Congress was given a suggestion, where (1) a contractor held several contracts and had previously received relief on some but not others, (2) a contractor had previously received some relief on a contract and later found it necessary to request further relief, or (3) a request for relief had been approved in part but final action was pending as to the rest. The proviso was probably thought advisable to preclude the administering agencies from denying relief automatically in these three types of cases. It was not designed to permit the reopening of a previous grant or denial of the very same request now relied upon by the contractor, and it is not worded in that sense. If Congress had intended to assume the potential liability and to impose the enormous administrative burden called for by

such reopening of all relief requests already determined—as well as to adopt the consequent unprecedented and discriminatory guarantee against wartime losses—it surely would have used plainer language, and the Act's history would contain some indication of that expanded purpose.

C. The statements in the subsequent Congresses to the effect that the President's regulations, and particularly paragraph 204, misconceive the Lucas Act's purpose can have little weight. They sharply diverge from the views expressed in the enacting Congress, and, at the very least, they are neutralized by the President's recent statements, in successfully vetoing two bills designed to embody the same view of the Act as petitioner's, that the Executive Order faithfully carries out the Act's intention as he understood it when he approved the measure.

D. If there should remain any doubt that paragraph 204 is consistent with the Lucas Act, the fact that the regulations were issued by the President should be decisive. Not only does a delegation to the President normally contemplate broad discretionary powers, but the President has had a close connection with the field of gratuitous relief in World War II which gives his Executive Order a special status. Above all, the President who issued the Order in controversy is the President who signed the Act, and the Order was issued within two months of his approving the statute. Only the clearest showing of manifest

error would warrant a finding that the President has misinterpreted and misapplied a statute bearing his own approval and entrusted to him for administration. No such powerful showing has been or can be made here.

ARGUMENT

Underlying the specific issues in this suit is a fundamental divergence of views as to the overall meaning and objective of the Lucas Act. Petitioner's position, as stated in the petition for certiorari (p. 11), is "that the Lucas Act is a remedial bit of legislation wholly independent of the First War Powers Act, 1941, and is intended to go far beyond the relief granted by the First War Powers Act, 1941." The Government, on the other hand, and both lower courts read the Act as being concerned with "claims for losses which a department of the Government could have entertained under section 201 of the First War Powers Act" (opinion below, R. 45), but which were administratively barred following the termination of World War II hostilities on August 14, 1945. The correctness of the latter view is clear, we believe, when the Act is read in the context of its circumstances and of the declarations of legislative purpose preceding its enactment. In the first section of our argument, therefore, we shall review briefly the events leading to, and the legislative history of, the Lucas Act. Against this background, we shall show that the courts below

correctly rejected petitioner's contention that his claim disclosed anything resembling the "written request for relief" from "losses" required by section 3 of the Lucas Act. Finally, even on the assumption that petitioner's purported requests for relief were sufficient, we shall argue that paragraph 204 of Executive Order No. 9786, barring consideration of claims based on requests which had been finally disposed of before August 14, 1945, is entirely consonant with the Lucas Act and affords an additional basis for affirming the judgment below.

I

THE BACKGROUND AND PURPOSE OF THE LUCAS ACT

1. As this Court has had recent occasion to observe, American commitments in World War II created "a demand for production of war supplies in proportions previously unimagined * * * for production in a volume never before approximated and at an undreamed of speed." *Lichter v. United States*, 334 U. S. 742, 763-764. This unprecedented demand, complicated by sudden shifts in war requirements and resulting in the inevitable blocks and dislocations of an economy strained to capacity, led to early realization of a need for sharp departures from peacetime methods of contracting for Government purchases.⁴ Immediately following Ameri-

⁴ See Fain and Watt, *War Procurement—A New Pattern in Contracts* (1944) 44 Col. L. Rev. 127.

ca's entry into the war, Congress, "in order to give the procurement agencies the flexibility they need in the procurement of war matériel" (Sen. Rep. No. 911, 77th Cong., 1st sess., p. 2), enacted Title II, Section 201, of the First War Powers Act (Act of December 18, 1941, 55 Stat. 838, 839, 50 U. S. C. App. 611), empowering the President to—

authorize any department or agency of the Government exercising functions in connection with the prosecution of the war effort, in accordance with regulations prescribed by the President for the protection of the interests of the Government, to enter into contracts and into amendments or modifications of contracts heretofore or hereafter made and to make advance, progress and other payments thereon, without regard to the provisions of law relating to the making, performance, amendment, or modification of contracts whenever he deems such action would facilitate the prosecution of the war * * *.

The grant of authority was necessarily broad and unparticularized. It remained for the President to distribute the power, spell out its details, and mark its limitations. This he did in Executive Order No. 9001, 6 F. R. 6787, 3 C. F. R., Supp. 1941, 330, promulgated on December 27, 1941.

Of importance here is the authority granted in Executive Order 9001 (Title I, par. 3) to desig-

nated war agencies,⁵ whenever in their judgment "the prosecution of the war [was] thereby facilitated," to amend or modify contracts "with or without consideration * * *." This authorization constituted a recognition of the fact that the pressure of war and the uncertainties attending new types of production frequently made accurate estimates of costs and production time impossible; that some contractors would probably underestimate their costs and assume ruinous obligations; that the resulting disruption and possible bankruptcy of business enterprises might deprive the Government of essential productive facilities. Cf. *Lichter v. United States*, 334 U. S., at 767-769.⁶ As the Attorney General said in his opinion of August 29, 1942, which became the charter for the war-contracting-agencies' activities under Title II of the First War Powers Act; "In passing the First War Powers Act, the Congress desired to enable you [the Secretary of War], and the contractors who supply you with

⁵ The powers conferred by Executive Order 9001 were originally confined to the War Department, the Navy Department, and the Maritime Commission. Subsequent executive orders (see 50 U. S. C. App., pp. 5730-5733) extended these powers to a number of other agencies.

⁶ The renegotiation legislation sustained in the *Lichter* case was directed, as this Court's opinion made clear, to the converse of the problem dealt with by Executive Order 9001. Because "accurate advance estimates of cost were out of the question" (*Lichter*, at 767), renegotiation and allied measures were deemed necessary to prevent a recurrence of the extravagant profits which had characterized earlier wars.

war matériel, to revise and modify existing arrangements so as to meet the countless dislocations and uncertainties caused by changes in weapons, in strategy, in the economy, in the availability of commodities, and other variables. The extreme scope of the power given by Title II to 'modify' and 'amend' contracts was explicitly recognized in the debate in the Senate. (See Cong. Rec., v. 87, p. 9839.) Title II must be given an interpretation which will carry out the obvious intention of its ~~farmers~~,⁴⁰ Op. Atty. Gen. 225, 233.

Under the authority of Title II and Executive Order 9001, so construed, the contracting agencies—particularly the War and Navy Departments—gave their procurement officials the extraordinary power, in the absence of legally sufficient consideration, to waive the Government's contract rights in proper cases, and to make upward adjustments in contract prices, increase the time allowed for performance, or alleviate the terms and conditions of the contract—adjustments to which the contractor would have had no right as a matter of contract law. Cf. *Saligman v. United States*, 56 F. Supp. 505, 508 (E. D. Pa.).⁴¹ This authority was widely used,

⁴⁰ The Comptroller General had frequently ruled that Government officials had no authority, under their normal procurement powers, to modify a contract to the prejudice of the United States, and "prejudice" was usually construed as financial detriment. E. g. 14 Comp. Gen. 468; 15 Comp. Gen. 25; 18 Comp. Gen. 114, 116; 19 Comp. Gen. 48, 51; cf. *Pacific*

for some three years during the war, to award monetary and other contractual relief as a matter of grace. The major procurement agencies established standard channels and procedures for the processing and scrutinizing of contractors' applications for "First War Powers Act relief," and issued regulations and policy-declarations indicating the categories of cases to which favorable consideration would be given, the types of relief which would be granted, and the character of the proof which would be required.* Broadly inter-

Hardware Co. v. United States, 49 C. Cls. 327, 335; *J. J. Preis & Co. v. United States*, 58 C. Cls. 81, 86-7; *Bausch & Lomb Optical Co. v. United States*, 78 C. Cls. 584, 607; *United States v. American Sales Corp.*, 27 F. 2d 389, 391-2 (S. D. Tex.), affirmed, 32 F. 2d 141, 141-2 (C. A. 5), certiorari denied, 280 U. S. 574. See Kramer, *Extraordinary Relief for War Contractors*, *op. cit. infra*, note 8, at pp. 369-372.

The Attorney General's opinion of August 29, 1942, upheld the power of the agencies to which authority had been delegated under Executive Order 9001 to make such contract modifications without consideration, where it was found that the prosecution of the war would be facilitated. He said of the War Department's initial regulation, which was submitted to him for his opinion: "The quoted provisions are amply sustained by the statute and the President's order. The directive submitted and the examples annexed plainly do not involve the award of any gratuity to the contractor, inasmuch as the proposed modifications or amendments are to be based on findings that the prosecution of the war will thereby be facilitated, thus contemplating a clear benefit to the United States." 40 Op. Atty. Gen., at 233.

* For detailed discussions of the administration of First War Powers Act relief, including examples of the forms such relief took, see Rowley, "The First War Powers Act Cases," in Shepherd, *Cases and Materials on the Law of Contracts* (2d ed. 1946), pp. 1233-1261; Fain and Watt, *War Procurement—A New Pattern in Contracts* (1944) 44 Col.

preting the basic criterion of facilitating the prosecution of the war, the war procurement agencies not only afforded relief where continued production by a contractor was needed for the war effort, but, in the belief that fair dealing would induce increased and speedier production and better cooperation, they also granted relief in many cases of honest mistake, reliance on extra-contractual instructions, representations, or promises by Government officials, or radically changed conditions.⁹ But at all times the fundamental

L. Rev. 127, 194-206; Kramer, *Extraordinary Relief for War Contractors* (1945) 93 U. of Pa. L. Rev. 357; cf. 40 Op. Atty. Gen. 225. The War Department's Procurement Regulations dealing with such relief are found in 10 CFR, Cum. Supp. (1943), secs. 81.308a-81.308g, 81.1252; 10 CFR, 1944 Supp., secs. 803.308a-803.308g, 812.1252; 10 CFR, 1945 Supp., sec. 812.1252. Many of the War Department's supply or technical services (e. g. Quartermaster Corps, Ordnance Department, Corps of Engineers, Medical Department) also issued supplementary directives. The main Navy directives are reprinted in Hearings before a Subcommittee of the Committee on the Judiciary, United States Senate, 79th Cong., 2d sess., on S. 1477, at pp. 67-75.

It should be noted that, in addition to the granting of contractual relief, Title II of the First War Powers Act and Executive Order 9001 were also authority for the consummation of many types of agreements and contracts which would otherwise be in violation of a specific federal statute (such as the Buy American Act) or contrary to common-law rules of contract. See Fain and Watt, *supra*; 40 Op. Atty. Gen. 225.

⁹ Col. Rowley, formerly Chief, Legal Branch, Office of the Director of Matériel, Army Service Forces, states that it is impossible to list all the types of cases in which the Army granted relief, but that the four main classes were as follows (Rowley, *supra*, note 8, at pp. 1236-8):

object and bounds of this emergency power were announced in the congressional and presidential directives that it was to be exercised only where "such action would facilitate the prosecution of the war * * *." Apart from this overriding consideration, there was no purpose to single out contractors as a special group in the population to be insured against business losses while the rest of the nation made the sacrifices called for by total war. Contractors were, in the language

"1. Where it was necessary to supply additional capital to maintain essential production of required material.

"2. Where the contractor undertook or continued production upon the faith of informal promises or assurances of persons in authority without the protection of a formal contract binding the Government.

"3. Where the terms of the contract as executed by the parties were the result of a mutual mistake or bona fide mistake by the contractor alone as to an existing fact.

"4. Where circumstances unforeseen when a contract was executed resulted in an unfair burden being placed upon the contractor by acts of the Government."

See also Fain and Watt, *supra*, note 8, at pp. 204-205, summarizing the War Department's Procurement Regulations on First War Powers Act relief.

The Navy's directive of July 7, 1943 (see Hearings, *supra*, note 8, at p. 75), emphasizes the continued productivity of essential war contractors, warns against "overwhelming generosity to careless contractors," and adds:

"Third, fair and honest treatment of war contractors will assist in inducing wholehearted cooperation on the part of such contractors, and applications for amendments or modifications without consideration to relieve contractors from *loss* (not merely diminution of anticipated profit) due to obvious errors and mistakes or due to Government action may be regarded with liberality in respect of contractors essential to the war effort." [Italics in original]

of the court below (R. 45) "the incidental beneficiaries of the Act." To emphasize the fact that contract modifications without consideration had in no sense become matters of legal right, applications for such adjustments came to be denominated "requests for relief."¹⁰

2. Following the surrender of the Japanese Government on VJ-day, August 14, 1945, the War Department concluded that no further relief under the First War Powers Act and Executive Order 9001 could be granted "unless the action was required in order to insure continued production necessary to meet post VJ-day requirements." Hearings before a Subcommittee of the Committee on the Judiciary, United States Senate, 79th Cong., 2d sess., on S. 1477, p. 5. The thought was that, except in the case of contractors whose production was still needed, it could no longer be said that contractual relief would "facilitate the prosecution of the war." Hearings, *supra*, pp. 5-6, 55. Other agencies apparently took the same position. Sen. Rep. No. 1669, 79th Cong., 2d sess., p. 3; H. R. Rep. No. 2576, 79th Cong., 2d sess., pp. 1-2. The result was that, with rare exceptions, contractors who had requested relief before VJ-day, whose requests were still pending and would have been granted but for the cessation

¹⁰ See Rowley, *supra*, note 8, at pp. 1238 *et seq.*, esp. 1238, 1240, 1244, 1254; Fain and Watt, *supra*, note 8, at 194, 197-8.

of hostilities, were denied relief.¹¹ Some of the requests so denied had been pending for extended periods; some had reached the stage of being ready for at least partial authorization and had been delayed only because the full amount to be granted had not been finally determined. See Hearings on S. 1477, *supra*, pp. 8, 9, 13, 17, 18, 20, 21, 33, 39, 48, 55, 59-60, 63. Whether or not this substantial termination of relief after VJ-day necessarily followed from the terms of the First War Powers Act,¹² its effect was obviously a painful blow to contractors who had been given to suppose that they might hope for the Govern-

¹¹ After the Contract Settlement Act of 1944 became effective on July 20, 1944, Section 17 of that statute ("Defective, informal, and quasi contracts") (41 U. S. C. 117), as well as Section 20 (a) (41 U. S. C. 120 (a)), gave the war procurement agencies some independent authority to grant nonlegal contractual relief, which did not terminate with VJ-day. Section 17 was limited in scope, however, and did not cover many of the important requests for relief made by contractors. See Regulation 12 of the Office of Contract Settlement, 32 CFR, 1945 Supp., Secs. 8060.1-8060.9, and Shepherd, *op. cit.*, *supra*, note 8, at pp. 1262-6. (Though it was included in a statute primarily concerned with the settlement of claims under terminated war contracts, Section 17 was not limited to terminated contracts. Section 20 (a) deals mainly with termination matters.)

¹² In his Veto Message on a recently attempted amendment of the Lucas Act (H. R. 3436, 81st Cong., 2d Sess.) discussed *infra*, pp. 68-73, 76-8, the President said: "When hostilities ended on August 14, 1945, a number of Government agencies felt, quite logically, that they could no longer make contract adjustments on the ground that relief so provided 'would facilitate prosecution of the war'" (96 Cong. Rec. (unbound) 9745).

ment's assistance in bearing such risks attending the haste of war production as serious mistakes and reliance upon technically unauthorized requests or instructions of contracting officers. See pp. 21-4, *supra*.

It appeared, moreover, that some agencies, differing with the War Department's view, were taking the position that relief was still available under the First War Powers Act, apparently not limiting such relief to the relatively narrow category of contractors engaged in "production necessary to meet post VJ-day requirements." Hearings, *supra*, pp. 16, 21; 92 Cong. Rec. 9092 (Senators Lucas and McCarran); H. R. Rep. No. 2576, 79th Cong., 2d sess., p. 2.¹³ In short, on the evi-

¹³ In the cited portions of the hearings and congressional debate on the Lucas Act, both Senators Lucas and McCarran pointed to the Navy Department and the Maritime Commission as agencies which, unlike the War Department, were continuing to grant relief. At a later point in the hearings (p. 64), J. Henry Neale, General Counsel for the Navy Department, stated that the "attitude of the Navy is precisely that of the Army with respect to the interpretation of the First War Powers Act." A moment later, however, Mr. Neale pointed out that the Navy was, after VJ-day, denying requests for relief "on the merits" (p. 64), and he expressed the view that one of the cases held to be barred by the Army because hostilities had ended could have been handled retroactively under the First War Powers Act (p. 66). It is not altogether clear, therefore, to what extent the views of the Army and Navy actually differed; it appears probable, however, that the Navy continued to process contractors' requests on their merits, though it denied most of them, while the Army refused even to consider the requests for relief. But the point of present importance is that the

denee before Congress, contractors who were equally deserving, in that the efforts of each of them had previously facilitated the prosecution of the war, were receiving unequal treatment—with grant or denial of relief turning, first, on the seemingly fortuitous circumstance of whether processing of a request had been delayed beyond VJ-day, or, secondly, on the interpretation of the First War Powers Act by the particular agency with which the contractor happened to be dealing. The sole and repeatedly expressed purpose of the Lucas Act was the elimination of these inequalities. See *F. G. Vogt & Sons v. United States*, 79 F. Supp. 929, 931 (E. D. Pa.).

Introducing his bill, Senator Lucas described it as being designed “to amend the First War Powers Act of 1941”, and he expressly referred to the War Department’s view that VJ-day was the cut-off date for relief. 91 Cong. Rec. 9564. Again, at the hearings on the bill, he characterized it as “nothing more or less than an amendment to the original act [First War Powers Act], which would give to the War Department the power to do the very thing they claim that they did not have the power to do.” Hearings on S. 1477, *supra*, p. 17. “Now, all I am trying to do,” he

author of the Lucas Act and the chairman of the subcommittee which studied it, who together shared the task of explaining the bill and urging its passage, both believed that there was a disparity among the agencies in treatment of requests for relief and stressed the resulting inequities as a basis for the proposed legislation.

said, "is 'to continue the war' for these fellows"—*i. e.*, contractors whose requests for relief were pending but not finally acted upon by VJ-day. *Id.*, p. 22.¹⁴ Later, explaining to the Senate the bill, as it was amended by the Senate Committee—which, with a minor and presently immaterial change, became the Act¹⁵—Senator Lucas reiterated these views, and spelled out the difference between the Army and the Navy interpretation of the War Powers Act. 92 Cong. Rec. 9092. And, taking up the explanation immediately following Senator Lucas, Senator McCarran, Chairman of the Senate Judiciary Committee and of the subcommittee in charge of the bill, added (*ibid.*):

¹⁴ The three cases discussed by Senator Lucas at the hearings all involved contractors whose requests for relief were "caught" by VJ-day. See Hearings, *supra*, at pp. 16-17 (Lake States Engineering), 18 (Hanover Mills), 19-21 (Enjay Constr. Co.). These contractors also appeared and made statements (see Hearings, *supra*, at pp. 31-36, 37-45, 46-50); in addition, two subcontractors of Enjay presented their cases (see Hearings, *supra*, at pp. 9, 45-46). Two other contractors wrote letters or made statements which do not indicate the basis of their requests for further legislation, though in the case of one (McGann Mfg. Co.) the VJ-day problem may be involved (see Hearings, *supra*, at pp. 9-10, 11-12, 50-52). The letters or short statements of two other contractors indicate that the passage of VJ-day was probably not the problem concerning them (see Hearings, *supra*, at pp. 10-11, 23-24, 24-26).

¹⁵ The only difference between the bill under consideration by the Senate at this point and the Act as it finally became law was that in the Senate bill the period for which relief might be given began December 7, 1941, instead of September 16, 1940.

Mr. President, let me say that this matter shows the difference between one department which approves and goes forward with adjustments and another department which disapproves and says that after VJ-day it has no right to go forward with adjustments. Those were the two horns of the dilemma. *In other words, one group was paid and another group was not paid; and those who suffered had to come to Congress and obtain specific provision for their relief, as set out in this bill.* [Emphasis added.]¹⁶

This understanding of the bill's purpose was not personal to its sponsor or to its other chief senatorial advocate—though their views are obviously significant—but was adopted and announced by the Judiciary Committees of both houses. In reporting the bill in its final form,¹⁷ these committees stated to the Congress (Sen. Rep. No. 1669, 79th Cong., 2d sess., p. 3; H. R. Rep. No. 2576, 79th Cong., 2 sess., pp. 1-2):

¹⁶ At the hearings, Senator McCarran said:

"* * * I think the only object that we have in allowing you gentlemen as you come in here to state your cases [*i. e.*, representatives of contractors], is to show to the committee the necessity for a clarifying statute, to clarify and make emphatic the things that Congress sought to do when it passed the War Powers Act" (Hearings, *supra*, p. 43).

¹⁷ With the exception, noted in footnote 15, *supra*, that the initial date for the period of coverage in the Senate bill was amended in the House bill, which version was enacted.

This bill [as amended¹⁸] would afford financial relief to those contractors who suffered losses in the performance of war contracts in those cases where the claim would have received favorable consideration under the First War Powers Act and Executive Order No. 9001 if action had been taken by the Government prior to the capitulation of the Japanese Government. However, upon the capitulation, the position was taken by certain departments and agencies of the Government involved, that no relief should be granted under the authority which then existed, unless the action was required in order to insure continued production necessary to meet post VJ-day requirements. This was on the basis that the First War Powers Act was enacted to aid in the successful prosecution of the war and not as an aid to the contractors. As a result, a number of claims which were in process at the time of the surrender of the Japanese Government, or which had not been presented prior to such time, were denied even though the facts in a particular case would have justified favorable action if such action had been taken prior to surrender. [Italics supplied.]

The House Committee report also appended Senator McCarran's statement on the Senate floor,

¹⁸ The two bracketed words appear in the Senate report but not in the House report. Otherwise the quoted passage is identical in both reports.

the most important part of which is quoted *supra*, at p. 30.¹⁹

With these repeated explanations before them, and without a word of congressional opposition to the measure,²⁰ both houses of Congress passed,

¹⁹ These highly significant statements, like the statements in the Senate debates, were directed to the bill as amended and as reported by the committees, and not as introduced. The district court's conjecture in *Warner Constr. Co. v. Krug*, 80 F. Supp. 81, 83 (D. D. C.), that "It may well be that some of the statements to which counsel refers had reference to the legislation in its original form" was mistaken insofar as it bore on the debates and the Committee reports. The Court of Claims, which likewise misconceives the Act's legislative history, does not mention the decisive Committee reports or the Senate debates. See *Howard Industries, Inc. v. United States*, 113 C. Cls. 231.

²⁰ Explanatory remarks on the Senate floor covering less than two pages of the Congressional Record (92 Cong. Rec. 9092-9093) comprised the whole of the congressional discussion of the bill.

In contrast with his generally deprecating attitude toward the legislative history of the Lucas Act, petitioner chooses to rely on some statements made by Senator Revercomb at the hearings (Pet. Br., 35-6). But these words are quite ambiguous, and, in the context of the consistent emphasis on the War Powers Act and the special need for a "continuation" statute such as the Lucas Act, they should not, and need not, be read as broadly as petitioner would apparently read them. If, however, Senator Revercomb's statements do bear the construction petitioner puts upon them, it is clear that they were purely individual views. They were neither endorsed by other members of Congress nor embodied in the bill as enacted. They can scarcely be weighed as authoritative against the uniformly contrary statements of the bill's sponsor, the Chairman of the Senate Subcommittee in charge of it, and the Judiciary Committees of both houses. Cf. *United States v. Wrightwood Dairy Co.*, 315 U. S. 110, 125; *McCaughn v. Hershey Chocolate Co.*, 283 U. S. 488, 493-494; *Duplex Co. v. Deering*, 254 U. S. 443, 474.

and the President signed, the Lucas Act. It became law on August 7, 1946. On October 5, 1946, the President issued Executive Order No. 9786 (11 F. R. 11553, 3 C. F. R., Supp. 1946, p. 165, Appendix A, *infra*, pp. 86-89) carrying out the Act's mandate (Sec. 1) that the relief it authorized was to be administered "in accordance with regulations to be prescribed by the President * * *." In this Executive Order, the President marked out in detail the limits of the announced congressional objective—to authorize relief from "losses with respect to which a written request for relief was filed * * * on or before August 14, 1945" (Section 3 of the Act), but not acted upon by that date. Petitioner concedes, as he must, that the President's nearly-contemporaneous Executive Order reflects precisely the view of the Act's history and purpose which we have set forth here, and not the view for which petitioner contends. See *infra*, pp. 50-4, 73-80.²¹

3. Legislative history and contemporaneous construction aside, the direct relationship between contractual relief under the First War Powers Act, as a matter of grace, and relief under the Lucas Act is clearly evidenced by the provisions of the latter statute. The first section limits the contracts or subcontracts with respect to which

²¹ See *infra*, pp. 68-73, for discussion of the significance of the various unsuccessful efforts to amend the Lucas Act, in the 81st Congress.

relief is to be available to those involving work "for any department or agency of the Government which prior to [August 14, 1945] * * * was authorized to enter into contracts and amendments or modifications of contracts under section 201 of the First War Powers Act, 1941 * * *." Section 3 provides that the claims to be considered "shall be limited to losses with respect to which a written request for relief was filed with such department or agency on or before August 14, 1945 * * *"—and "request for relief" is the special term used to describe applications by contractors for the exercise of First War Powers Act authority. See *supra*, p. 25. Section 3 also refers to a "previous settlement under the First War Powers Act, 1941, or the Contract Settlement Act of 1944."²² Section 2 requires consideration of "relief granted under section 201 of the First War Powers Act, 1941, or otherwise", and, just as in War Powers Act cases, the statute refers to the awards to be made under the Lucas Act as "relief" (sections 2, 5). The use, in sections 1, 2, and 6, of terms such as "equitable claims," "fair and equitable settlement," and "the equities involved in such claim," reveals a further significant link to the earlier act, for

²² It should be recalled that sections 17 and (20) (a) of the Contract Settlement Act also provided statutory authority for certain limited types of contractual relief. Section 20 (a) is particularly significant here because, by express reference to the War Powers Act, it indicates that the provisions are closely related. See *supra*, note 11, p. 26.

First War Powers Act requests for relief also involved purely "equitable" claims, *i. e.*, claims which were not demandable as of right. At the same time, the principle of "equity" was designed to bring about equality between those contractors whose chance for relief was abruptly cut off *in medias res* on August 14, 1945, and those fortunate enough to have had their applications processed before that date or by other agencies.²³ Because of the ending of hostilities, and also of the War Department's strict interpretation of "facilitate the prosecution of the war," the statute omitted explicit reference to that requirement of the War Powers Act. But inherent in the substituted concept of "equity" was the directive to accord equal treatment to all groups of contractors who had petitioned for First War Powers Act relief before August 14, 1945.²⁴

²³ The principle of "equity" replaced the notion of "manifest injustice," which appeared in the bill as introduced (see Hearings, *supra*, at p. 1), because of the feeling that the latter term was too vague and indefinite. Hearings, *supra*, at p. 27, 43, 58, 59; 92 Cong. Rec. 9092 (Sen. McCarran).

²⁴ Petitioner asserts that there are three differences between the First War Powers Act and the Lucas Act which demonstrate that the relief afforded under the latter is broader. Two of these supposed differences do not exist; the third plainly lacks the significance petitioner attributes to it.

(1) Petitioner points out (Pet. Br. 29-40) that the period for which relief is available under the Lucas Act begins September 16, 1940, while the First War Powers Act was not enacted until December 18, 1941. But the relief authorized by Section 201 of the First War Powers Act applied with respect to "contracts heretofore or hereafter made * * *." The initial date for which relief was available was thus po-

4. Against the decisive weight of the history and statutory language we have summarized to this point, petitioner contends broadly that the President's Executive Order and the views of the courts below are misconceived, that the Act Congress passed and the President signed was wholly different from its description by authoritative congressional spokesmen. The Act, petitioner tentially earlier, rather than later, than that specified in the Lucas Act.

(2) Equally fallacious is the suggestion (Pet. Br. 29) 40-1) that First War Powers Act relief was not, like relief under the Lucas Act, available to subcontractors. Under the broad authority conferred by First War Powers, relief had been deemed possible for, and had been granted to, subcontractors. See Hearings on S. 1477, *supra*, at pp. 55, 57-58; War Department Procurement Regulations, 10 C. F. R., Cum. Supp. (1943), Sec. 81.248(b); Fain and Watt, *War Procurement—A New Pattern in Contracts* (1944) 44 Col. L. Rev. 127, 203; Kramer, *Extraordinary Relief for War Contractors* (1945), 93 U. Pa. L. Rev. 357, 368, 381.

(3) Nor is petitioner's view of the Lucas Act bolstered by the fact that Section 6 permits a dissatisfied claimant to seek a court determination (see Pet. Br. 44-5). It was thought appropriate to enforce continuance by the agencies of their previously adopted War Powers Act relief standards, despite the cessation of hostilities, through the device of judicial review, and this appears to have been the basis for Section 6, which was written into the bill in committee. See 92 Cong. Rec. 9092-3. But the possibility of review in a court "sitting as a court of equity" effects no enlargement in the substance of a claimant's rights. Section 6 limits the recovery in a court action to an amount "not exceeding the amount which might have been allowed by the department or agency concerned under the terms of this Act * * *."

See also *supra*, pp. 33-35, and *infra*, pp. 38-40, 50-52, 54-64, 76-79, for further discussion of the similarity between the Lucas Act and the First War Powers Act.

argues (Pet. Br. 3), was designed simply to grant "relief to all contractors, subcontractors, and materialmen who suffered losses on the sum total of all of their war contracts with the Government, without fault or negligence on their part." Building upon the assumption that Congress intended this unique system of indemnity for war contractors, neither related to nor limited by the specific type of relief available under the First War Powers Act, petitioner urges, first, that invoices and a claim for requisitioned property constitute written "requests for relief" from losses within the meaning of the Lucas Act. Secondly, petitioner argues, given his definition of a "request for relief" from loss, the fact that such a request had been acted upon before VJ-day and had been the subject of a mutual settlement of claims with the Government could not operate to preclude the further grant of government funds under the Lucas Act. In this Point, we have shown that petitioner's basic premise—that the Lucas Act is far broader than the First War Powers Act—is false. In the remainder of our argument, we shall prove more specifically, first, that the documents upon which he relies are not "requests for relief" from losses under the Lucas Act, and, secondly, that even if one assumes that a proper request was filed, petitioner is barred from Lucas Act consideration because his pre-VJ-day claim was finally disposed of on its merits before August 14, 1945.

II

PETITIONER, HAVING FAILED TO SHOW THE FILING BEFORE AUGUST 14, 1945, OF A "WRITTEN REQUEST FOR RELIEF" FROM THE CLAIMED LOSSES, HAS NO BASIS FOR SEEKING RELIEF AUTHORIZED BY THE LUCAS ACT

Section 3 of the Lucas Act expressly restricts consideration of claims for losses to those "losses with respect to which a written request for relief was filed with [the] department or agency on or before August 14, 1945 * * *." Appendix A, *infra*, p. 84. Both lower courts have concluded that petitioner's claim failed to disclose anything which could be called the required request for relief from losses. We submit that an examination of the requirement and of the documents claimed by petitioner to fulfill it demonstrates the correctness of that conclusion.

1. As we have seen (pp. 25, 34, *supra*), the term "requests for relief" was the precise term used to describe requests for the unusual assistance—contract modifications, without consideration—available to contractors under the First War Powers Act and Executive Order 9001. It was the refusal by some agencies to grant such requests after August 14, 1945, which led to the Lucas Act. *Supra*, pp. 25-33. Against this background, the conclusion is inescapable that the "written request for relief" required by Section 3 is a request for First War Powers Act (or similar) relief. If there were substance to petitioner's view that the

meaning and purpose of the Lucas Act ought to be divined without reference to its illuminating legislative history, grave difficulty would be encountered in assigning any definite meaning to the unusual statutory phrase "request for relief." Aside from the war period and the War Powers Act, the phrase has no roots in procurement practice, either of the Government or of private parties; its stress on "request," on "relief"—*i. e.*, on grace—is plainly inconsistent with the normal attitude of contractors demanding their rights and satisfaction of a legal claim. And if petitioner's basic argument that the Act was designed as a blanket assumption by the Government of war contract risks were not wholly without support, it would be difficult to know the reason for the requirement that some vague "request for relief" must have been filed before August 14, 1945; both the date and the requirement would be unexplainable. But there is no doctrine of self-imposed blindness which requires the President, the executive agencies, and the courts to guess at the intention of Congress where authoritative expositions of that intention are clear and available. See *Mitchell v. Cohen*, 333 U. S. 411, 417-418; *Harrison v. Northern Trust Co.*, 317 U. S. 476, 479; *United States v. American Trucking Ass'ns*, 310 U. S. 534, 543-544; *United States v. Dickerson*, 310 U. S. 544, 562; *Ozawa v. United States*, 260 U. S. 178, 194; *United States v. Sweet*, 245 U. S. 563. These sources, revealing

the legislative purpose "to continue the war" for contractors whose pending requests for the extraordinary relief authorized by the First War Powers Act had been denied because of the cessation of hostilities (*supra*, pp. 25-33), give intelligibility and precision to the written-request-for-relief provision. They render untenable the view that any sort of written claim or demand for government moneys satisfies the requirement.

2. The documents upon which petitioner relies not only fail to meet the description of "requests for relief" from losses intended by the Lucas Act; they serve also to point up the correctness of our argument that the Act referred to requests for relief under the First War Powers Act. These documents, which are before this Court in their original form and have been printed in illustrative part in Appendix B to our brief (pp. 91-98, *infra*), consist of (1) petitioner's objection to the Government's claim and his counterclaim filed in the proceedings for reorganization of Inland Waterways, supported by (2) a number of invoices presented to the Navy Department for various goods and services and by (3) a claim filed with the Navy Department for reimbursement for requisitioned property.

The first of these, the counterclaim filed in the bankruptcy court, hardly calls for extended argument. It was in no sense a "request" addressed to the Navy Department. It was an invocation of the compulsive powers of the district court

sitting in bankruptcy demanding judgment against the Government. It was "filed with" the Navy Department, not in the statute's obvious sense of being presented to the agency for appropriate administrative action, but only in so far as any pleading is "filed with" an opposing party—a procedure to which the word "filed" is plainly inappropriate. It was, in short, so clearly not the kind of "request for relief" the Lucas Act could possibly have intended that it was not deemed to merit separate discussion by either of the courts below.

Both courts did discuss and reject the contention that the invoices and the petition for payment for requisitioned property served as "written requests for relief" from losses. To reach a contrary conclusion they would have had not only to disregard the purpose of the Lucas Act, but to distort its plain language as well. Invoices and claims for just compensation are demands for payment as a matter of right; only some extraordinary lapse in statutory draftsmanship would explain their having been described in the phrase "request for relief." Moreover, there is no basis for petitioner's contention that the invoices and claim for compensation in this case constitute requests for relief *with respect to contract losses*. The authorization of relief for such losses in specified cases is, of course, the burden of the Lucas Act (Section 1), and the request required to have been filed before August

14, 1945, must have been "with respect to" the claimed losses (Section 3). But the invoices and compensation claim upon which petitioner relies make no mention of losses. Indeed, one of the invoices (Appendix B, *infra*, p. 98) demands payment for "loss" of anticipated profits, an item expressly excluded by Section 2 (a) from consideration under the Lucas Act.²⁵ As the court below observed (R. 44), neither the invoices nor the compensation claim "purport to be a claim for the difference between the contract price for the performance of any of the Waterways contracts and the actual cost to Waterways for such performance, the claim involved in this action and presented to the Navy Department for the first time in February 1947." Nor did the presentation of these demands for payment carry any necessarily implied announcement of "losses," for, turning to the district court's opinion (R.

²⁵ It may be noted, in this connection, that the relief authorized by the Lucas Act is more restricted than that which had been available under the First War Powers Act. The modifications obtainable under the latter statute were not limited to recovery of losses, and some War Department contractors actually recovered expected profits in certain cases. See Rowley, *supra*, note 8, pp. 1251, 1253, 1254. (The Navy apparently did not allow profits (see note 9, *supra*, p. 24).) Only losses "not including diminution of anticipated profits" are allowable under the Lucas Act and these are limited so as not to exceed "the amount of the net loss, * * * on all contracts and subcontracts held by the claimant under which work, supplies, or services were furnished for the Government between September 16, 1940, and August 14, 1945 * * *." Secs. 1 and 2(a).

19), "Obviously a contractor may present claims for extras without representing either that he sustained a loss or that he seeks relief from a loss." Equally obviously, the district court points out (*ibid.*); a petition seeking compensation for requisitioned property is not a request for relief from losses incurred in furnishing work, supplies, or services to the Government under a contract, as Section 1 of the Lucas Act requires.

Because they neither "requested relief" nor concerned "losses", the claims upon which petitioner relies here were never, before the present litigation, treated by either the petitioner or the Navy Department as requests for relief from losses. From the time of their assertion to the time of their settlement with the approval of the bankruptcy court (R. 9-15), there was no suggestion that these claims were intended to invoke the Navy's power to grant any relief which would not have been available as of right. Petitioner does not even now claim that, at the time they were presented to the Navy, these documents sought First War Powers Act, or similar, relief. The Navy never had occasion, therefore, to consider petitioner as a potential recipient of such relief. For this obvious reason, the settlement agreement approved by the bankruptcy court (R. 9-15) makes no mention of the First War Powers Act or of Executive Order 9001, as it would have if the Navy had been dealing with a request for

relief. See district court opinion, R. 25; Rowley, *supra* note 8, pp. 1240-1261. Petitioner was obviously pressing legal claims for moneys he considered to be properly owing to Inland Waterways, claims on which suit could be brought. For a contract debt, or to secure compensation for property taken by the Government, the contractor could pursue well-established judicial remedies. 28 U. S. C. 1346 (a) (2), 1491. Extraordinary gratuitous relief under the War Powers Act was unnecessary and irrelevant; it was neither invoked nor considered.

There is not the slightest basis in its history or wording for supposing that the Lucas Act was intended in any way to enlarge, or provide an alternative to, the ordinary legal remedies available to contractors. Every signpost, as we have shown, points the other way. *Supra*, pp. 25-33.²⁶ Indeed, had Congress intended to establish a fresh review of legal-claims-as-of-right, there would have been neither reason nor meaning in requiring a showing that a "written request for relief" from losses had been filed before August 14, 1945. With accidental exceptions, every contractor presents written invoices to the Government and every businessman whose prop-

²⁶ In addition to the other factors we have mentioned, it should be noted that many of the legal claims would be barred by the statute of limitations, or, as in the instant case, released for a valuable consideration, and to permit their renewed presentation would be an extraordinary, unmentioned, and unexplained bounty.

erty has been taken files a claim for compensation. Moreover, claims as of right cannot well fit into the category of "losses" until they are finally acted upon, since no loss can exist until the claim is denied in whole or in part. Such claims still pending on VJ-day would, therefore, not involve "losses," as Section 3 of the Act requires. In these circumstances, petitioner's interpretation would, at best, make of the filing requirement little more than superfluous verbiage—and ill-chosen verbiage at that, since, as we have pointed out, petitioner suggests no explanation why Congress should have misdescribed contract and just compensation claims as "requests for relief" from "losses." Actually, however, the quoted language, adopted from administrative usage under the First War Powers Act, aptly describes the kind of request for relief without consideration which had been made administratively allowable by that Act and to which, in our view, Congress gave continued efficacy after August 14, 1945, by the Lucas Act. The writings upon which petitioner relies bear no remote relationship to such a request, and petitioner does not claim that they do.²⁷

²⁷ Executive Order 9786 does not contain an explicit definition of "request for relief," but it implicitly embodies the definition we urge. In paragraph 307, it provides (*infra*, p. 89):

"307. Relief with respect to a particular loss claimed shall not be granted under the Act and these Regulations unless the war agency considering the claim finds, or, in case such

3. This conclusion entails no disagreement with petitioner's argument that no precise form is necessary to constitute a request for relief. As petitioner points out (Pet. Br. 17), the executive agencies in determining the sufficiency of alleged requests under the Lucas Act have not imposed any formal tests,²⁸ and we argue for none here. No special form is required, and there are no prescribed words which must appear in the request for relief. The only essential is that the document must show that it is an application for extraordinary gratuitous relief from losses suffered in the performance of Government contracts or subcontracts.

Petitioner is in error, however—as, we believe, are the lower court decisions upon which he relies—when he reasons from the absence of formal requirements to the absence of any significant requirements at all. For reasons urged above, we believe the Court of Claims, and some district courts, have misread the language and history of the Lucas Act when they conclude that such writings as invoices for contract extras, re-

loss was incurred under the contracts and subcontracts of another war agency, such other war agency finds, that relief would have been granted under the First War Powers Act, 1941, if final action with respect thereto had been taken by the war agency on or before August 14, 1945."

²⁸ See, e. g., *Milwaukee Engineering and Shipbuilding Company*, CCH Government Contracts Reporter, 4 CCF par. 60,452 (Navy Department War Contracts Relief Board), reversed, 113 C. Cls. 276; *E. Totonelly Sons*, 4 CCF, par. 60,823 (Army War Contract Hardship Claims Board).

quests for redeterminations under contract escalator clauses, or appeals from contracting officers' termination rulings constitute requests for relief within the meaning of the Lucas Act. *Howard Industries, Inc. v. United States*, 113 C. Cls. 231; *Modern Engineering Co. v. United States*, 113 C. Cls. 272; *Milwaukee Engineering & Shipbuilding Co. v. United States*, 113 C. Cls. 276; *Stephens-Brown v. United States*, 81 F. Supp. 969 (W. D. Mo.); *Pittston-Luzerne Corp. v. United States*, 84 F. Supp. 800, 801 (M. D. Pa.); cf. *McGann Mfg. Co. v. United States*, 83 F. Supp. 957 (M. D. Pa.). Judge Whitaker, dissenting from these Court of Claims decisions (113 C. Cls. at 243, 275, 279), the courts below, and a number of district courts (*Davidson v. United States*, 82 F. Supp. 420 (D. D. C.); *Acme Fir Dressing Co. v. United States*, 80 F. Supp. 927 (E. D. N. Y.); *F. G. Vogt & Sons v. United States*, 79 F. Supp. 929 (E. D. Pa.); *Jardine Mining Co. v. R. F. C.* (D. D. C., unreported), Civil Action No. 2843-47, May 25, 1948) properly recognize the distinction between a claim as of right and a "request for relief" from losses. It is not insistence on form to say that the request contemplated by the Lucas Act must at least have (1) indicated in some way that the extraordinary power under the First War Powers Act and Executive Order 9001 to grant amendments without consideration was being invoked, and (2) referred to some described loss or losses. Neither of these minimal require-

ments is met by the documents asserting rights to payment upon which petitioner relies here. They are not, however liberally the language and purpose of Congress is construed, "requests for relief" from losses.²⁹

III

EVEN IF THE DOCUMENTS FILED BY PETITIONER BEFORE AUGUST 14, 1945, WERE REQUESTS FOR RELIEF FROM LOSSES, PARAGRAPH 204 OF EXECUTIVE ORDER 9786, BARRING RELIEF WHERE FINAL ACTION WAS TAKEN ON SUCH REQUESTS BEFORE AUGUST 14, 1945, IS VALID AND PRECLUDES THE PRESENT CLAIM

The Navy Department War Contracts Relief Board, while indicating that petitioner's purported requests for relief were probably insufficient (R. 6, 7), found it unnecessary to decide this point. Paragraph 204 of Executive Order 9786, issued pursuant to the Lucas Act, provides that "no claim shall be considered if final action with respect thereto was taken on or before" August 14, 1945. *Infra*, p. 87. The Board held that the mutual compromise of February 20, 1945 (R. 9-

²⁹ In Point III, in connection with the finality of pre-VJ-day dispositions of "requests for relief," we spell out certain arguments which are also applicable to the construction of the term "request for relief" itself: (1) the deference due to contemporaneous administrative construction; (2) the special respect due to the President's Executive Order, which inferentially incorporates the view we urge, and to his views on the Lucas Act; and (3) the accepted rule requiring interpretation of bounty legislation in the Government's interest, in case of doubt. See *infra*, pp. 50-54, 59 (fn. 33), 66-80.

15), in which petitioner received payment for, and executed an unconditional release of, the claims now asserted, constituted final action within the meaning of paragraph 204 and barred relief under the Lucas Act. This conclusion, accepting *arguendo* petitioner's erroneous contention that the documents he relies upon were requests for relief, was approved by the district court (R. 20-29) and serves as an independent and sufficient basis for sustaining the judgment below.³⁰ For petitioner's attack upon the validity of paragraph 204 is without merit. The Act plainly envisages the promulgation of Presidential regulations limiting and prescribing the occasions for, and the type of, relief to be granted; and this particular provision of the regulations contravenes neither the Act's words nor its purpose.³¹

³⁰ The Court of Appeals found it unnecessary to pass upon this point (R. 40). Two other district courts have agreed with the district court below that paragraph 204 is valid. *Jardine Mining Co. v. R. F. C.*, D. D. C., Civil No. 2843-47, May 25, 1948 (unreported); *Acme Fur Dressing Co. v. United States*, 80 F. Supp. 927 (E. D. N. Y.). Two district courts and the Court of Claims have held paragraph 204 to be invalid. *Warner Constr. Co. v. Krug*, 80 F. Supp. 81 (D. D. C.); *Stephens-Brown v. United States*, 81 F. Supp. 969 (W. D. Mo.); *Howard Industries, Inc. v. United States*, 113 C. Cls. 231, 239 *et seq.*; *Warner Constr. Co. v. United States*, 113 C. Cls. 265. See also *Prebilt Co. v. United States*, 88 F. Supp. 588 (D. Mass.).

³¹ Much, though not all, of the argument in this Point III is also applicable to the issue of what is a proper "request for relief" from "losses," discussed in Point II. See note 29, *supra*, p. 48.

A. To begin with, the Lucas Act shows by its very terms that the presidential regulations it requires are to comprise much more than the simple prescription of forms and procedures. Woven into the Act as a prerequisite to the granting of any relief at all, the regulations are necessary to spell out the details of the limitations and conditions which are indicated, but not fully defined, by the general statutory language. Section 1 provides that the departments and agencies to which the Act applies "are hereby authorized, *in accordance with regulations to be prescribed by the President within sixty days after the date of approval of this Act*, to consider, adjust, and settle equitable claims of contractors * * *" (*infra*, p. 82. [Italics supplied.] The regulations are thus expressly directed to govern the three steps of consideration, adjustment, and settlement of the claims, and are not designed to be merely procedural, mechanical, or formal.

Secondly, despite petitioner's attempt to read it as a legislative mandate for governmental assumption of war contractors' risks, the Act is, on its face, no more than an *authorization* to settle claims of a *restricted type*. The title declares the statute to be one "To *authorize* relief *in certain cases* where work, supplies, or services have been furnished for the Government under contracts during the war." 60 Stat. 902 (*infra*, p. 82). [Emphasis added.] As we have already pointed out (*supra*, pp. 33-35, 38-40), Sections 1, 2,

and 3 define the authorization and spell out the "certain cases" to which the Act applies by reference to (a) the departments or agencies authorized "to enter into contracts and amendments or modifications of contracts under section 201 of the First War Powers Act, 1941," (b) "equitable claims" and "fair and equitable settlement of claims", (c) "losses * * * incurred between September 16, 1940, and August 14, 1945, without fault or negligence * * *," (d) the filing of a "request for relief" prior to VJ-day, and (e) action taken, or relief granted, under other legislation. Finally, Section 2 (a) provides that the amount of a contractor's net loss on all his contracts or sub-contracts with the agencies involved should constitute an upper limit on the relief authorized—not, it should be emphasized, an amount required to be granted.

It is obvious, we think, from the character of these specific provisions, as well as from the entire structure of the Act, that the President was granted broad power to establish more detailed standards and criteria for the awarding of relief. His role was not limited to dotting i's and crossing t's. It was necessary, for example, to give some content to the general terms "equitable claims" and "fair and equitable settlement." Clearly, these provisions could not be explained by reference to "equity" in its technical, legal sense, for the claims authorized were not derived from, or related to, claims recognized by courts

of equity. Nor was it apparent that the word "equitable" was used to describe a general moral obligation; it was at least questionable whether, in a period of almost universal sacrifice, the Government acquired an ordinarily unrecognized ethical duty to heal the financial wounds of those who had lost money on Government contracts through no demonstrable fault or negligence of their own. In short, these were terms the meaning and scope of which it was necessarily open to the President to define, specify, or circumscribe. Similarly, the provisions of Section 3 (*infra*, pp. 83-84) respecting the prior filing of a "written request for relief" and "previous settlement" are certainly not so precise and exact that the President was precluded from defining them and prescribing more detailed rules. On the contrary, that was the very function expressly vested in him by the opening section of the Act (*supra*, p. 50), and the challenged paragraph 204 of the Executive Order represents a careful exercise of that power.³²

³² The Attorney General's letter of March 5, 1946, to Senator McCarran (reprinted at p. 2 of Hearings before a Subcommittee of the Committee on the Judiciary, U. S. Senate, 79th Cong., 2d sess., on S. 1477) observed: "The President would be empowered to prescribe regulations to further the purpose of the legislation. *The enactment of the measure would afford, therefore, an additional criterion for the determination of those claims.*" (Italics supplied.) This was written about the bill as originally introduced, before its amendment by the committee, but the change in language (e. g. from "manifest injustice" to "equitable" claims) would

In these circumstances, it is apparent that for several reasons petitioner's attack must fail unless he proves the plainest inconsistency between paragraph 204 and the Lucas Act. Where Congress has particularly intended an administrator to have broad rule-making powers by conditioning rights or benefits on rules prescribed by him, his regulations "should not be overruled by the court unless clearly contrary to the will of Congress." *Commissioner v. South Texas Co.*, 333 U. S. 496, 503. Added to this principle is the settled rule that a contemporaneous construction of a statute by those charged with its administration "is not to be overturned unless clearly wrong, or unless a different construction is plainly required." *United States v. Jackson*, 280 U. S. 183, 193; *Edward's Lessee v. Darby*, 12 Wheat. 206, 210; *United States v. Philbrick*, 120 U. S. 52, 59; *Fawcett Machine Co. v. United States*, 282 U. S. 375, 378; *Billings v. Truesdell*, 321 U. S. 542, 552-553; *Commissioner v. South Texas Co.*, *supra*, 501. And both of these rules acquire special force where Congress plays the role of benefactor. For it is another "familiar rule that where there is any doubt as to the meaning of a statute which 'operates as a grant of public property to an individual, or the relinquishment of 'public interest,'

not affect this comment. See note 23, *supra*, p. 35, *infra*, pp. 55-56. The Committee reports (*supra*, p. 30) do not fail to take note of this delegation to the President in describing the bill as amended.

the doubt should be resolved in favor of the Government and against the private claimant." *Northern Pacific R. Co. v. United States*, 330 U. S. 248, 257, and cases cited. Likewise, the breadth of discretion in issuing regulations depends to some extent on the subject matter (*Hamilton v. Dillin*, 21 Wall. 73, 92-93; *United States v. Antikamnia Co.*, 231 U. S. 654, 666), and gratuity legislation must be read from that viewpoint. There can be no dispute, of course, that in the Lucas Act, as in the Dent Act which followed World War I, "Congress was seeking to save the beneficiaries from losses which it would have been under no legal obligation to make good if a private person. It was a gratuity based on equitable and moral considerations." *Work v. Rives*, 267 U. S. 175, 181.

B. In establishing the subordinate standards and criteria contemplated by the Lucas Act, the President was directly guided by the most fruitful sources available to him—the Act's purpose and legislative history. Far from being "plainly inconsistent" with either the purpose or the history of the statute, paragraph 204 of the Executive Order clearly accords with both.

1. It will be recalled that, as we have shown in Point I (*supra*, pp. 25-33), the situation which led to the Lucas Act was the refusal by some agencies to grant relief under the First War Powers Act after VJ-day on the ground that the cessation of hostilities had made impossible findings that

such relief would facilitate the prosecution of the war. This refusal led to two forms of discrimination which were deemed inequitable by Congress: (1) between contractors whose requests for relief had been disposed of by VJ-day and those whose requests were still pending on that date; and (2) between contractors dealing with agencies like the War Department, which refused relief after VJ-day, and those dealing with agencies taking the opposite view. Repeatedly—in the hearings, in floor discussion, and in the committee reports—the bill which became the Lucas Act was described as affording relief to the class of contractors who had been refused rulings on their requests after VJ-day. *Supra*, pp. 28-32.

It was to this class of contractors alone that the interest of Congress was directed when it authorized the consideration of "equitable claims * * * for losses * * *." The language of Section 201 of the First War Powers Act, authorizing contract modifications without consideration when "such action would facilitate the prosecution of the war," had been thought insufficient to warrant relief for these contractors. And so, as originally introduced, S. 1477 authorized amendments without consideration after VJ-day where "necessary to prevent a manifest injustice * * *." Hearings on S. 1477, p. 1. The phrase "manifest injustice" was criticized as being too vague (*id.*, pp. 58-58, 60; see note 23, *supra*, p. 35), and, along with numerous other

changes designed "to limit it in every respect and to protect it in every respect" (92 Cong. Rec. 9092, Senator McCarran), the bill was amended to provide for settlement of "equitable claims * * * for losses * * *." While this change may or may not have effected some improvement in terms of precision, there is not the slightest evidence that it was intended to alter the focus of congressional concern. There was no indication that Congress was dissatisfied with the administration of relief under the First War Powers Act prior to VJ-day or that the Lucas Act was designed to remedy any supposed injustice to contractors whose requests for relief had been granted or denied on their merits. Indeed, when the possibility of reopening requests for relief already determined administratively was mentioned at all, it was mentioned only to be rejected. In the Hearings on S. 1477, there appears the following significant colloquy between Senator McCarran, Chairman of the Subcommittee on the bill, and J. Henry Neale, General Counsel for the Navy Department (pp. 64-65) :

The CHAIRMAN. I do not understand that the idea of the bill is to direct payment of something that was turned down on its merits.

Mr. NEALE. I quite understand, Senator.

The CHAIRMAN. I do not think the Congress of the United States will want to inject itself into a judgment on the merits, on the facts. I think the Congress, if it

will want to do anything, will want to so clarify the law that as to the just and equitable case that seems to be precluded from judgment by reason of the condition that has arisen, the condition will be removed so that its merits may be considered. I think that is all the Congress will want to do.

Numerous statements revealing the same limitation were before the President when he issued, in Executive Order 9786, the regulations required by the Lucas Act. See pp. 28-32, *supra*. To repeat only one of these, the Judiciary Committees of both houses had explained that the bill was designed simply to "afford financial relief to those contractors who suffered losses in the performance of war contracts in those cases where the claim would have received favorable consideration under the First War Powers Act and Executive Order No. 9001 if action had been taken by the Government prior to the capitulation of the Japanese Government." Sén. Rep. No. 1669, 79th Cong., 2d sess., p. 3; H. R. Rep. No. 2576, 79th Cong., 2d sess., p. 1, *supra*, p. 31. Reading the Lucas Act in the light of such declarations, the President had every reason to believe that the Act was to be confined to its stated purpose. He had no reason to believe that, without apparent need and with no discussion of so drastic a step, Congress intended to require reconsideration, at contractors' demands, of the mass of requests for

relief of which final disposition had been made during the war.

We submit, then, that when the terms of the Lucas Act are read in the context which explains their significance, it becomes clear that paragraph 204 of Executive Order 9786 accords completely with the congressional purpose in barring claims "if final action with respect thereto was taken on or before" VJ-day. If it had omitted this limitation, the Order could have been charged with ignoring one of the meanings Congress had sought to convey in confining the Act to "equitable claims" as to which "requests for relief" from losses had been filed prior to VJ-day. It would have countenanced the expansion of a relatively uncontroversial authorization of relief for a narrow class of claimants into an unprecedented and discriminatory vehicle for taking business losses out of war. For on petitioner's view that the Order should have prescribed reconsideration of requests for relief denied before August 14, 1945, the Act would become an extraordinary guarantee against over-all losses on war business, and at the same time would purposelessly discriminate against war contractors who filed requests or claimed losses after August 14, 1945.

2. Petitioner contends, however, that paragraph 204 is invalid because Section 3 of the Act, after stating the requirement of a written request for relief filed before August 14, 1945, adds the proviso that "a previous settlement under the

First War Powers Act, 1941, or the Contract Settlement Act of 1944 shall not operate to preclude further relief otherwise allowable under this Act." *Infra*, p. 84. Whatever plausibility this argument has when the quoted clause is first read disappears when the language is examined more closely in the context and framework of the Act as a whole. It then becomes apparent that this single terminal clause was not inserted to contradict and reverse the numerous authoritative statements of congressional purpose, that it was not intended to permit reopening of requests for relief which had been disposed of finally and with unconditional releases of all future claims against the Government.³³

Both the Lucas Act and the President's Executive Order recognize the possibility that a claimant who had already received relief under the First War Powers Act might have had occasion to request and receive further relief under that Act. This was possible (1) where a contractor held several contracts and had received relief on some but not on others, (2) where a contractor

³³ It bears repetition here that the agreement involved in this case was not, in any event, made "under the First War Powers Act, 1941, or the Contract Settlement Act of 1944 * * *." See pp. 5, 43-4, *supra*. It follows that the proviso in Section 3 of the Lucas Act, whatever its meaning, would have no application to the present case. This is, however, simply a further illustration of the fact that petitioner's claim must fail because of his inability to show the filing of a written request for relief before August 14, 1945. See Point II, *supra*, pp. 38-48.

had received some relief on a contract and later found it necessary to request further relief, or (3) where a request for relief had been approved in part and final action was still pending as to the rest. Congress realized that some contractors in these categories undoubtedly had requests for relief pending when the shooting war ended. Accordingly, provision was made in Section 2 (a) of the Lucas Act that, in considering claims for losses, the agencies were to take into account, with respect to "all contracts and subcontracts held by the claimant," "relief granted under Section 201 of the First War Powers Act, 1941, or otherwise * * *" (*infra*, p. 83). This directive is repeated in paragraph 303 of Executive Order 9786, which also provides, in paragraph 101.8, that the contract price used in determining a contractor's loss should include "any amounts paid or payable pursuant to any amendment, adjustment, or settlement * * * under the First War Powers Act * * *," (*infra*, p. 88).

Thus, the Executive Order as well as the Act contemplate the granting of relief to claimants who had requests pending on VJ-day, despite the fact that they might have received prior relief on earlier requests or on a portion of their pending requests. The terminal clause upon which petitioner relies was intended, we submit, merely as a congressional warning against the view that a contractor who had once received relief under the First War Powers Act was

thereby precluded from the receipt of further relief, on requests still pending, under the Lucas Act.³⁴ It cannot be construed, however, to mean that a request under which relief had already been granted or denied—which had been disposed of finally and completely during the war and was no longer pending on VJ-day—may now be revived and made the basis for the bestowal of additional relief. The clause does not provide that “a previous settlement under the First War Powers Act *of the same request now relied upon* shall not operate to preclude further relief under this Act.” It says instead that “a previous settlement under the First War Powers Act * * * shall not operate to preclude further relief *otherwise allowable* under this Act.” As the district court held (R. 24), “‘Further relief otherwise allowable’ means consistent with the basic objectives of the Act.” It means that a claim for losses on one contract is not barred by final action on another before VJ-day, and that a fresh request, filed prior to VJ-day, on a contract which had either been amended or considered for amend-

³⁴ In view of the direction, in Section 2 (a), to “consider” all previous “relief granted under Section 201 of the First War Powers Act, 1941” and any previous action taken under the Contract Settlement Act of 1944, the Congress may well have included the terminal clause of Section 3 in order to preclude the President or an agency from construing this Section 2 direction to “consider” such previous action or relief as authority to deny relief automatically to claimants who had previously received awards under either of those Acts, but who still had requests pending.

ment before, may be considered under the Lucas Act.³⁵ It does not mean that the limited group of contractors with which Congress was concerned was suddenly and inconspicuously expanded, in a proviso, to create a mass of claimants, an administrative burden of potentially impossible proportions,³⁶ and a liability without visible limits. In short, it "does not revive requests which had been disposed of by VJ-day" (District Court opinion, R. 24).

³⁵ There is especially good reason for believing that Congress had in mind the case of a contractor whose request for relief had been approved in part before August 14, 1945, but the remainder of whose request for relief was pending as of that date. On the floor of the Senate, Senator Lucas described such a case at length (92 Cong. Rec. 9092) as "one example of how important this matter is to the small contractors who were caught in between when VJ-day came." The last clause of Section 3 may have been prompted by this case, or a similar one.

³⁶ The task of reviewing all the war contracts of claimants who had filed requests for relief during the war, including those whose requests had been granted or denied finally, would obviously have been staggering. Cf. Hearings before a Subcommittee on the Judiciary, United States Senate, 81st Cong., 1st sess., on S. 873 and H. R. 3436, p. 60. Such a review is necessary, of course, in order to determine in accordance with Section 2 (a) of the Lucas Act "the amount of the net loss (less the amount of any relief granted subsequent to the establishment of such loss) on all contracts and subcontracts held by the claimant under which work, supplies, or services were furnished for the Government between September 16, 1940, and August 14, 1945 * * *." See also par. 101.11 of the Executive Order (*infra*, p. 87). Even the lesser task of reviewing and rehearing the hundreds of individual First War Powers Act relief cases handled between 1942 and 1945 would be enormous.

It is true that, as introduced, S. 1477 provided that "this section shall not be applicable to cases submitted under section 201 of the First War Powers Act, 1941, which have been finally disposed of under such section upon their merits prior to August 14, 1945." See Petitioner's Brief, pp. 41-2. But the omission of this clause in the bill as passed, after the language of the bill had been "carefully redrafted so as to limit it in every respect and to protect it in every respect" (92 Cong. Rec. 9092, Senator McCarran), does not aid petitioner. In its original form, the bill was couched in terms of a presidential authorization to departments and agencies to amend or modify contracts whenever necessary to prevent a "manifest injustice." Under this blanket authority relief might have been given without regard to whether a written request for relief from losses had been filed with the agency concerned before VJ-day. Section 2 of the bill as introduced simply extended until July 1, 1946, the time for filing "claims or requests for action," and the doors were thus opened to all types of claims, including those never previously presented and those already passed upon. It was appropriate to write into this broad authorization an express exclusion of requests disposed of before VJ-day. The bill as passed, however, was limited to losses from which relief had been requested by VJ-day. In the light of the intervening legislative history, the pattern of the Act

as it evolved, and the use of "equitable" and "equities" in the sense of nondiscrimination against claims pending on VJ-day, it was no longer necessary to include the special proviso which had appeared in the original bill.

Even if the stress on "equity" had not referred to the special discrimination with which we think Congress was plainly and solely concerned, it seems incredible to suppose that dead claims like the one asserted here, once mutually compromised and paid for by the Government, were intended to be revived as "equitable claims" under the Lucas Act. If the terminal clause of Section 3 were construed to reopen any requests for relief which had already been determined on their merits, it would be necessary, at the very least, to construe the term "previous settlement" in Section 3 as applying only to a unilateral administrative determination and not to the present type of bilateral agreement accompanied by a complete release. "The word 'settlement' in connection with public transactions and accounts has been used from the beginning to describe administrative determination of the amount due." *Illinois Surety Co. v. United States*, 240 U. S. 214, 219. And, unless the words "equity" and "equitable" were to be read out of the Lucas Act, petitioner's view of Section 3 would have to be qualified by defining the word "settlement" in accordance with the usage referred to by Mr. Justice Hughes in the quoted sentence from

Illinois Surety Co. v. United States. For it is difficult to perceive the "equity" in a claim like petitioner's which, in its demand for double payment, is manifestly inequitable in any sense of the word. See note 46, *infra*, p. 80.

We believe, however, that the terminal clause of Section 3 calls for no consideration of the distinction between unilateral and bilateral settlements. The interpretation of that clause embodied in the President's Executive Order is, we submit, entirely correct in refusing to read the clause as reviving requests for relief disposed of before VJ-day. This interpretation gives ample scope to the clause without stretching beyond recognition the avowed purpose of the Lucas Act, without devitalizing the words "otherwise allowable," and without having an excepting clause control the whole body of the Act and unsettle closed transactions for no stated reason in policy or justice. Paragraph 204 of the Executive Order simply heeds the repeated admonition that the intention of Congress "is to be ascertained, not by taking the word or clause in question from its setting and viewing it apart, but by considering it in connection with the context, the general purposes of the statute in which it is found, the occasion and circumstances of its use, and other appropriate tests for the ascertainment of the legislative will." *Helvering v. Stockholms Enskilda Bank*, 293 U. S. 84, 93-94; *Holy Trinity Church v. United States*, 143 U. S. 457, 462; *United*

States v. Katz, 271 U. S. 354, 357; *United States v. Ryan*, 284 U. S. 167, 175. Moreover, "a liability in any case is not to be imposed upon a government without clear words"; *Pine Hill Co. v. United States*, 259 U. S. 191, 196. Where, as here, the asserted liability is unprecedented and potentially enormous, and appears never to have been contemplated by Congress, "only the plainest language could warrant a court in taking it to be imposed" (*Ibid.*; *United States v. Zazove*, 334 U. S. 602, 617, reversing 162 F. 2d, 443 (C. A. 7), cited at Pet. Br. 43-4); and words of that character cannot be found in the Lucas Act. Petitioner's view, on the other hand, requires that the terminal clause of Section 3 be stripped of part of its language, lifted from its context and history, read with the improbable premise that this single terminal clause was intended to dissociate the "bounty altogether from the motive which actuated Congress in granting it * * *" (*Allen v. Smith*, 173 U. S. 389, 402), and construed in a manner directly opposed to the dominant canon in the interpretation of gratuity legislation.

C. Petitioner also seeks to bolster his view of Section 3 (as well as his argument as to what constitutes a "request for relief") by citing statements made in later Congresses which have differed with the President's Executive Order and the President's views of the Lucas Act. The short answer to this argument is that these later statements diverge not only from the President's

construction but also from the views expressed by the Congress which actually enacted the statute.

1. Section 37 of the Act of June 25, 1948 (62 Stat. 869, 992, Appendix A, *infra*, p. 85-6)³⁷ amended Section 6 of the Lucas Act to confer jurisdiction upon the Court of Claims, leaving jurisdiction of suits up to \$10,000 in the district courts. Reporting this provision, Senate Report No. 1559, 80th Cong., 2d sess., included the following sentence (p. 14):

Public Law No. 657 of the Seventy-ninth Congress [the Lucas Act] provides for the determination of war claims incurred without fault or negligence *where any form of contract relief had been requested during the war and despite former administrative denial or settlement thereof.* [Emphasis added.]

Petitioner's reliance upon this sentence is plainly misplaced. The amendment under consideration when the sentence was written dealt only with procedure. It neither affected, nor was affected by, the scope of the substantive rights conferred by the Lucas Act. The statement was thus unnecessary and unimportant. It was, moreover, flatly contradictory of the Act it purported to describe. The volunteered comment that the Act provided for claims "where any form of con-

³⁷ The Act of June 25, 1948, was the general statute amending and revising Title 28 of the U. S. Code.

tract relief had been requested during the war" ignores the express requirement of Section 3 that a written request for relief from losses must have been filed.

2. In the second session of the Eighty-first Congress, both houses passed H. R. 3436, a bill which would have broadened considerably the benefits conferred by the Lucas Act. 96 Cong. Rec. (unbound) 8407, 8779. Among other things, the bill would have amended Section 3 of the Act to read:

Claims for losses shall not be considered unless filed with the department or agency concerned on or before February 7, 1947, and unless a written request for relief, or a demand for payment of such losses, or a notice of such losses, sustained or impending, adequate under the circumstances to apprise such department or agency of the distress of the contractor was filed or submitted to such department or agency or to any of its subordinate officers on or before August 14, 1945; but a previous settlement, regardless of its nature, under the First War Powers Act, 1941, or the Contract Settlement Act of 1944, or other final action on a request for relief shall not operate to preclude further relief otherwise allowable under this act. A request for relief, or a demand for payment of losses or a notice of such losses, sustained or impending, adequate under the circumstances to apprise

such department or agency of the distress of the contractor which had been submitted to or filed with a prime Government contractor by a subcontractor, or with a subcontractor by a sub-subcontractor, prior to August 14, 1945, shall constitute a proper and sufficient request for relief within the terms of this act. The form of the request for relief hereunder shall be immaterial, provided it inform the Government or the dominant contractor that a loss was being suffered, was anticipated, or had been suffered by the contractor, subcontractor, or sub-subcontractor in connection with the work in question. [Emphasis added to mark changes.]

H. R. 3436 was vetoed (96 Cong. Rec. (unbound) 9745) (*infra*, pp. 76-78), and no attempt was made to override the veto.³⁸ Thereafter, Congress passed another bill, S. 3906, in the stated belief that this revised measure met the President's objections to the previous bill. This bill, too, was vetoed (96 Cong. Rec. (unbound) 13143) (*infra*, pp. 78-79); the Senate, by a vote of 39 to 30, refused to repass the bill over the President's veto (96 Cong. Rec. (unbound) 14871), and

³⁸ The legislative history of H. R. 3436 includes the following materials: H. R. Rep. No. 422; Sen. Rep. No. 1632; 95 Cong. Rec. 5440; 96 Cong. Rec. (unbound) 8405-8407, 8778-8779, 9745-9746; Hearings before a Subcommittee of the Committee on the Judiciary, U. S. Senate, 81st Cong., 1st sess., on S. 873 and H. R. 3436.

the Lucas Act remains unchanged.³⁹ It thus becomes unimportant to consider whether the amendments, had they been enacted, would have

³⁹ The legislative history of S. 3906 includes the following: Sen. Rep. No. 2052; H. R. Rep. No. 2782; H. R. Rep. No. 2704 (on a companion measure, H. R. 9121); 96 Cong. Rec. (unbound) 10124, 11223-4, 12085-6, 13143, 14865-71.

The pertinent provisions of S. 3906 are as follows:

"Be it enacted, etc., That the act of August 7, 1946 (Public Law No: 657, 79th Cong., ch. 864, 60 Stat. 902), as amended (sec. 37 of the act of June 2 , 1948, ch. 646, 62 Stat. 869, 992), is hereby amended by adding the following section thereto:

"SEC. 7. Within the limitations stated in this act and no others—

* * * *

"(2) notwithstanding anything in section 3 of this act with reference to the necessity of a request for relief filed on or before August 14, 1945, claims otherwise payable under this act shall be allowed to the extent that they include losses with respect to which in a writing submitted to a department or agency concerned on or before August 14, 1945, the claimant (a) requested relief, available under the First War Powers Act, (b) demanded payment thereof, or (c) gave notice of such sustained or impending loss; but nothing in this paragraph shall be taken to limit or exclude other requests for relief otherwise sufficient under section 3 of this act;

"(3) claims otherwise payable under this act as amended shall include those of subcontractors on the same basis as the claims of prime contractors if the request for relief, demand for payment, or notice of sustained or impending loss required by section 3 of this act or defined by paragraph (2) of this section was submitted in writing by such claimants on or before August 14, 1945, to either (a) a department or agency concerned, or (b) the prime contractor or other subcontractor involved."

helped petitioner.⁴⁰ What does merit comment is the fact that, in connection with H. R. 3436 and S. 3906, the view was expressed in Congress that Executive Order 9786 did not properly carry out the intention of the Lucas Act. H. R. Rep. No. 422, 81st Cong., 1st sess., p. 1; Sen. Rep. No. 1632, 81st Cong., 2d sess., pp. 1, 3, 6; 96 Cong. Rec. (unbound) 8406 (all on H. R. 3436); Sen. Rep. No. 2052, 81st Cong., 2d sess., pp. 1-2; H. R. Rep. No. 2782, 81st Cong., 2d sess., p. 1; H. R. Rep. No. 2704, 81st Cong., 2d sess., p. 1;⁴¹ 96 Cong. Rec. (unbound) 10124, 11224, 14865, 14868-9, 14870. These statements in the Eighty-First Congress now interpret the Lucas Act as having intended broader relief than the First War Powers Act had afforded. The interpretation underlying paragraph 204 of Executive Order No. 9786, barring relief on requests which had been finally disposed of before V.J.-day, is asserted to be erroneous.

⁴⁰ It may be noted in passing, however, that, even under the sweepingly liberal terms of these bills, it is improbable that the documents upon which petitioner relies would qualify as requests for relief, a demand for payment of losses, or a notice of losses. See Point II, *supra*, p. 40 *et seq.*

⁴¹ It is significant, however, that H. R. Rep. No. 2704 specifically states (p. 1) that "It was not and is not the intent of Congress to permit the reopening of decided claims under" the First War Powers Act and the Contract Settlement Act.

The important point here, however, is that the opinions expressed in a later Congress on which petitioner relies are irreconcilable with the descriptions of the Lucas Act by the Congress which passed it. They find their own refutation in the legislative history of the Act as it is recorded in the hearings, the Committee reports, and the Congressional Record. See pp. 25-33, *supra*. They cannot serve now to effect radical changes in the unequivocal statements of legislative intent which guided the Congress in passing the Act, and the President both in approving the Act and in issuing regulations under it.⁴² Cf. *United States v. Mine Workers*, 330 U. S. 258, 281-282; *Hartford Electric Light Co. v. Federal Power Comm.*, 131 F. 2d 953, 964 (C. A. 2), certiorari denied, 319 U. S. 741. Had they accompanied the original bill, these congressional opinions, now several years removed, would, of course, have influenced the regulations. But they also would probably have prevented the adoption of the Act. See *supra*, p. 69, and note 45, *infra*, pp. 76-79. To endow them today with any retroactive significance as against the President's contemporaneous regulations, issued in the light of sharply different congressional sentiments, would serve in effect

⁴² It is even doubtful to what extent these statements reflect the considered views of the 81st Congress, since the two unenacted bills passed both houses without objection and with almost no discussion; after the President's veto of S. 3906, a majority of the Senators voting (39-30) refused to repass the measure. 96 Cong. Rec. (unbound) 14871.

to enact the amendatory legislation the President has disapproved.

Moreover, these expressions of opinion in the 80th and 81st Congress are effectively neutralized, at the very least, by the President's explicit and categorical statements, in his two recent veto messages, that he construed the Lueas Act, at the time he gave it his approval, very differently from the way in which the sponsors of the amendatory bills now say that they interpreted it, and that he then relied on the legislative history of the Act as we have set it forth in Point I, *supra*. See *infra*, pp. 76-79. And unlike the later Congressional declarations to which petitioner refers, the President's recent statements are fully in accord with the statements made in Congress at the time the Lueas Act was being considered, as well as with the Executive Order issued two months after the Act became law.

D. This reference to the President's views brings us to a factor which we have thus far barely touched upon in our discussion of the validity of paragraph 204 of the Executive Order but which we believe to be of capital significance—that it was the President who issued the regulation now challenged by petitioner. If any doubt remains, that crucial fact should sharply turn the scale. For the President's unique position endows his Executive Order with a special strength.

One can start with the basic double proposition that a delegation to the President often contemplates somewhat wider discretionary powers than a similar grant to a subordinate, and also that exercises of delegated powers by the President will less readily be overturned by the courts. Cf. *Hamilton v. Dillin*, 21 Wall. 73, 92-3. See *supra*, p. 53. In this case, there must be added the historical fact that the Lucas Act deals with an area of government procurement which had originally taken shape as an administrative mechanism evolved by the executive departments and agencies under presidential directives. For the specific idea of granting contract modifications without legal consideration cannot fairly be attributed to Congress. It was, in fact, a device which made its first appearance in Executive Order 9001, 3 C. F. R., Supp. 1941, p. 330 (Title I, par. 3), as an exercise of the broadly stated grant of power in Section 201 of the First War Powers Act "to enter into contracts and into amendments or modifications of contracts heretofore or hereafter made * * * without regard to the provisions of the law relating to the making * * * of contracts * * *." See *supra*, pp. 18-25.

Thus, when the end of the war brought what Congress deemed a discriminatory refusal of relief to some contractors by some agencies, and Congress enacted the Lucas Act "to afford a means of considering, adjusting and settling equitable claims of the contractors affected" (Sen.

Rep. No. 1669, 79th Cong., 2d sess., p. 3; H. R. Rep. No. 2576, 79th Cong., 2d sess., p. 2), the statute simply removed a block to a program which had long since been set in operation by the President. The benefits made possible by the statute were appropriately declared to be available, as had been the case under the First War Powers Act, only "in accordance with regulations to be prescribed by the President * * *"—explicitly recognizing and confirming the President's special position in World War II in the field of gratuitous contractual relief.

Above all, in the case of the Lucas Act, there is also the further significant fact that the President who issued the Executive Order in controversy is the President who signed the Act, and that the Order was issued within two months of his approval of the statute.

For the President, in addition to his role as executive, plays a vital part in the legislative process, and his contemporaneous views on approving a measure must be considered along with the Congressional materials. Cf. *Edwards v. United States*, 286 U. S. 482, 490; *Lynch v. Dept. of Labor and Industries*, 19 Wash. 2d 802, 810-811.⁴³ Where contemporaneous presidential regu-

⁴³ Indeed, as time and events have molded the shape of American government, students of its operation have come increasingly to the view that the President is more "Chief Legislator" than "Chief Executive." McBain, *The Living Constitution*, p. 117, and, generally, pp. 115-120, 122 (1928); Carwin, *The President: Office and Powers*, c. VII (3d ed., 1918).

lations are attacked as inconsistent with the statute by which they are authorized, the attack ordinarily implies that the President has clearly mistaken the meaning of a law in the enactment of which he had a prime share, and which probably would never have been enacted without his signature.⁴⁴ It is especially pertinent to note the extreme character of this assumption in the present case, since there is the most substantial evidence in the two recent veto messages—for the belief that the President would not have approved the Lucas Act had he supposed that the limitations spelled out in Executive Order 9786 were not intended by Congress,⁴⁵ and it is most unlikely that such a veto would have been overridden. This is not to suggest that, be-

⁴⁴ Corwin, *op. cit. supra*, at pp. 342-343, finds from "the testimony of statistics" that "the President's veto is normally effective in nine cases out of ten."

⁴⁵ (1) In his veto message on H. R. 3436, 81st Cong., 2d sess., which would have extended relief to claimants whose requests for relief under the First War Powers Act had been disposed of before VJ-day and would otherwise have broadened the scope of the Lucas Act (see pp. 68-69, *supra*), the President referred to the limited purpose of the Lucas Act as he understood it and declared (96 Cong. Rec. (unbound) 9745-9746):

"I cannot accept the contention that the purpose of the War Contractors Relief Act [Lucas Act], which H. R. 3436 would amend, was other than to provide a basis for relief to those contractors whose cases would have been handled under the First War Powers Act if war had not ended. Had I believed there was a broader purpose, I would not have issued the kind of regulations which were promulgated in Executive Order 9786. These regulations were a faithful attempt to interpret the language of the act as affording

cause a significant element of the legislative will is his own, the President has power to thwart that will in the exercise of his duties as Chief Executive. Cf. *Corwin, op. cit. supra*, note 43; p.

nothing more than a statutory basis for the continued processing of written applications for relief under the First War Powers Act which were pending and undisposed of on August 14, 1945. * * *

"H. R. 3436, and the reports recommending its enactment, would radically change the basic purpose of the original War Contractors Relief Act. I believe that in spite of any administrative interpretation which might be made to limit the effects of the bill, its provisions not only require reconsideration of all claims originally filed, but might also be construed to permit reopening of an unknown number of cases settled under the First War Powers Act and the Contract Settlement Act. * * *

"When [the element of interest as an added item of cost], relaxation of requirements for filing notice, liberalization of relief beyond that afforded by the First War Powers Act, and the specific exclusion of finality of settlement under the First War Powers Act and the Contract Settlement Act are all added together, I believe that the net effect of this bill, for all practicable purposes, would be to write into law the principle of Government insurance against all wartime net losses incurred by contractors providing goods and services to the Government.

"In my veto message on H. R. 834, Eighty-first Congress, a bill 'To amend the Contract Settlement Act of 1944,' I stated that the implications of acceptance of such a principle 'are profound, both with respect to our finances and with respect to our free-enterprise system.' I stated further, 'In my opinion, it would be a serious error to introduce at this time a new principle—insurance against war-caused losses. This would involve reopening the entire program of financing the war, with incalculable effects upon our finances.' These quotations are equally applicable in the case of this bill. If this principle should ever be accepted for those who had

344. It is to urge only that nothing less than a powerful showing of manifest error would warrant a finding that the President has misinter-

contracts with the Government, I would see no basis for withholding its extension to thousands upon thousands of other persons who suffered in producing for the war effort without contracts."

(2) In his later message vetoing S. 3906 (*supra*, pp. 69-70), the President said (96 Cong. Rec. (unbound) 13143, August 21, 1950) :

"While it is evident that an attempt has been made to adopt certain of the clarifying amendments to the War Contractors Relief Act which I suggested [in his veto message on H. R. 3436, *supra*], it is likewise evident that no attempt has been made to limit their scope to claims or requests for relief that would have been granted under the First War Powers Act of 1941 but for the termination of hostilities with Japan on August 14, 1945. Indeed, the committee reports negative the possibility of any such restricted interpretation of the amendments. The bill, moreover, would not preclude the reopening of an indeterminate number of cases that have been settled under the First War Powers Act or the Contract Settlement Act of 1944.

"In the absence of these limitations, the provisions of the present measure and their legislative background are quite sufficient to accomplish what I consider to be a total departure from the intent and scope of the War Contractors Relief Act. I refer particularly to the proposed 'definition of a request for relief' in paragraph (2), which greatly relaxes the existing requirement that claims be founded upon a specific application for the extraordinary relief which was allowable under the First War Powers Act, and to the similar language in paragraph (3) relating to the claims of subcontractors.

"It was not the purpose of the First War Powers Act to relieve contractors because of loss, or to indemnify them against loss. On the contrary, that act authorized the granting of relief because it would assist in obtaining needed war production and thereby 'would facilitate the prosecution of the war.' In my opinion, the sole objective of the War Con-

preted and misapplied a statute bearing his own approval and entrusted to him for its administration.

No such showing has been or can be made here. Paragraph 204 of Executive Order 9786 embodies the President's conviction that neither he nor the Congress had intended in approving the Lucas Act to reopen closed transactions under the First War Powers Act and to permit all contractors who had sought (and frequently received) financial relief without consideration to invoke a new "principle of Government insurance against all wartime net losses incurred by contractors providing goods and services to the Government." Veto Message on H. R. 3436, 81st Cong., 2d sess., 96 Cong. Rec. (unbound) 9745, 9746, June 30, 1950. That conviction was supported by the circumstances and declarations of congressional purpose leading to the Lucas Act. It was wholly consistent with the statutory scheme and terms in which Congress announced its objective. It ac-

tractors Relief Act was to afford a basis for the continued processing of those relatively few requests for First War Powers Act relief which were still pending on August 14, 1945, and could not be handled by the war agencies after that date without additional statutory authority. I am plainly supported in this opinion by the legislative history of the War Contractors Relief Act, to which I expressly invite the attention of the Congress (S. Rept. No. 1669, H. Rept. No. 2576, 79th Cong.; 92 Cong. Rec. 9092)."

The President then went on to refer to his prior veto message on H. R. 3436, and to quote some of the portions set forth above.

corded with the traditional caution with which legislative bounties to private individuals are viewed in our law. Neither petitioner's out-of-context textual arguments nor his mixed bundle of later Congressional statements (*supra*, p. 71) can destroy these weighty supports for the President's regulation. We submit, therefore, that petitioner's claim, already paid for by the Government, falls outside the purview of the Lucas Act and was correctly denied under paragraph 204 of Executive Order 9786.⁴⁶

⁴⁶ Even if paragraph 204 of the Executive Order is invalid, the judgment below may be affirmed on the independent ground (aside from the absence of a proper "request for relief") that Inland Waterways' voluntary release (for an adequate consideration) of all its claims against the Government, in the agreement of February 1945 (R. 14), necessarily deprives its present claim of all equity, and the claim must therefore be denied on the merits under Sections 1, 2, and 6 of the Act. The District Court took this position (R. 28).

CONCLUSION

For the reasons set forth above, it is respectfully submitted that the judgment below should be affirmed.

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OCTOBER 1950.

APPENDIX A

The Lucas Act (Act of August 7, 1946, 60 Stat. 902, 41 U. S. C. 106 note) provided:

AN ACT

To authorize relief in certain cases where work, supplies, or services have been furnished for the Government under contracts during the war.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That where work, supplies, or services have been furnished between September 16, 1940, and August 14, 1945, under a contract or subcontract, for any department or agency of the Government which prior to the latter date was authorized to enter into contracts and amendments or modifications of contracts under section 201 of the First War Powers' Act, 1941 (50 U. S. C., Supp. IV, app., see, 611), such departments and agencies are hereby authorized, in accordance with regulations to be prescribed by the President within sixty days after the date of approval of this Act, to consider, adjust, and settle equitable claims of contractors, including subcontractors and materialmen performing work or furnishing supplies or services to the contractor or another subcontractor, for losses (not including diminution of anticipated profits) incurred between September 16, 1940, and August 14, 1945, without fault or negligence on their part in the performance of such contracts or subcontracts. Settlement of such claims shall be made or approved in each case by the head of the department or agency.

concerned or by a central authority therein designated by such head.

SEC. 2. (a) In arriving at a fair and equitable settlement of claims under this Act, the respective departments and agencies shall not allow any amount in excess of the amount of the net loss (less the amount of any relief granted subsequent to the establishment of such loss) on all contracts and subcontracts held by the claimant under which work, supplies, or services were furnished for the Government between September 16, 1940, and August 14, 1945, and shall consider with respect to such contracts and subcontracts (1) action taken under the Renegotiation ~~Act~~ (50 U. S. C., Supp. IV, app., sec. 1191), the Contract Settlement Act of 1944 (41 U. S. C., Supp. IV, sec. 101-125), or similar legislation; (2) relief granted under section 201 of the First War Powers Act, 1941, or otherwise; and (3) relief proposed to be granted by any other department or agency under this Act. Wherever a department or agency considering a claim under this Act finds that losses under any such contract or subcontract affected the computation of the amount of excessive profits determined in a renegotiation agreement or order, and to the extent that the department or agency finds such amount was thereby reduced, claims for such losses shall not be allowed under this Act.

(b) Every claimant under this Act shall furnish to the department or agency concerned any evidence within the possession of such claimant bearing upon the matters referred to in subsection (a) of this section.

SEC. 3. Claims for losses shall not be considered unless filed with the department or agency concerned within six months

after the date of approval of this Act, and shall be limited to losses with respect to which a written request for relief was filed with such department or agency on or before August 14, 1945, but a previous settlement under the First War Powers Act, 1941, or the Contract Settlement Act of 1944 shall not operate to preclude further relief otherwise allowable under this Act.

SEC. 4. Appropriations or funds available for work, supplies, or services of the character involved in the respective claims at the time of settlement thereof shall be available for payment of the settlements: *Provided*, That where no such appropriations are available, appropriations for payment of such settlements are hereby authorized.

SEC. 5. Each department and agency shall report to the Congress quarterly the name of each claimant to whom relief has been granted under this Act, together with the amount of such relief and a brief statement of the facts and the administrative decision.

SEC. 6. Whenever any claimant under this Act is dissatisfied with the action of a department or agency of the Government in either granting or denying his claim, such claimant shall have the right within six months to file a petition with any Federal district court of competent jurisdiction, asking a determination by the court of the equities involved in such claims; and, upon the filing of such a petition, the court, sitting as a court of equity, shall have jurisdiction to determine the amount, if any, to which such claimant and petitioner may be equitably entitled (not exceeding the amount which might have been allowed by

the department or agency concerned under the terms of this Act) and to enter an order directing such department or agency to settle the claim in accordance with the finding of the court; and thereafter either party may appeal from the decision of the court as in other equity cases.

2. Section 37 of the Act of June 25, 1948 (62 Stat. 869, 992), revising 28 U. S. C., amended Section 6 of the Lucas Act to provide:

Whenever any claimant under this Act is dissatisfied with the action of a department or agency of the Government in either granting or denying his claim, such claimant shall have the right within six months to file a petition with the Court of Claims or, if the claim does not exceed \$10,000 in amount or suit has heretofore been brought or is brought within thirty days after the enactment of this amendatory act, with any Federal district court of competent jurisdiction, asking a determination by the court of the equities involved in such claim; and upon the filing of such a petition, the court, sitting as a court of equity, shall have jurisdiction to determine the amount, if any, to which such claimant and petitioner may be equitably entitled (not exceeding the amount which might have been allowed by the department or agency concerned under the terms of this Act) and to enter an order directing such department or agency to settle the claim in accordance with the finding of the court; and thereafter either party may appeal from the decision if it was rendered by a district court or petition the Supreme Court for a writ of certiorari if it was rendered by the Court of Claims, as in other cases. Any case heretofore brought in a district court under this sec-

tion may, at the election of the petitioner to be exercised within thirty days after the enactment of this amendatory Act, be transferred to the Court of Claims for original disposition in that court.

3. Executive Order No. 9786, dated October 5, 1946 (3 C. F. R., Supp., 1946, p. 165), issued pursuant to the Lucas Act, provides in pertinent part:

PART I—DEFINITIONS

101. As used in these Regulations—

* * * * *

101.3 The term "war agency" means any department or agency of the Government which, prior to August 14, 1945, was authorized to enter into contracts and amendments or modifications of contracts under section 201 of the First War Powers Act, 1941 * * *

* * * * *

101.8 The term "contract price" means the aggregate of all amounts (before taxes and statutory renegotiation) paid or payable to a contractor or subcontractor for work, supplies, or services furnished during the statutory period pursuant to a contract or subcontract, including any amounts paid or payable pursuant to any amendment, adjustment, or settlement of or on account of such contract or subcontract under the First War Powers Act, 1941, the Contract Settlement Act of 1944 (41 U. S. C., Supp. IV, secs. 101-125), or otherwise.

101.9 The term "loss" means the amount by which the cost of performance of a contract or subcontract exceeds the contract price thereof.

* * * * *

101.11 The term "net loss" means the amount by which the aggregate of the costs of performance under all contracts and sub-contracts exceeds the aggregate of the contract prices under all contracts and sub-contracts, after giving appropriate effect to action in renegotiation proceedings in respect of the statutory period.

* * * * *

PART II—FILING OF CLAIM

201. No claim shall be received or considered by any war agency unless properly filed in accordance with the Act and these Regulations on or before February 7, 1947.

202. Each claim shall be in writing and shall contain or shall be accompanied by:

* / * * * *

e. A copy of each written request filed on or before August 14, 1945, with the war agency concerned, for relief with respect to the losses claimed.

f. A copy of any other written request filed prior or subsequent to August 14, 1945, with any agency for relief with respect to the losses claimed.

g. A statement of any other relief sought from the Government with respect to the losses claimed.

* * * * *

204. No claim for loss under any contract or subcontract of a war agency shall be received or considered unless a written request for relief with respect thereto was filed with such war agency on or before August 14, 1945; and no claim shall be considered if final action with respect thereto was taken on or before that date.

* * * * *

PART III—SETTLEMENT OF CLAIMS

* * * * *

303. Each war agency, in considering a claim, shall take into consideration (a) action taken with respect to the claimant under section 403 of the Sixth Supplemental National Defense Appropriation Act, 1942, as amended, the Contract Settlement Act of 1944, or similar legislation; (b) relief granted the claimant under section 201 of the First War Powers Act, 1941, or otherwise; and (c) relief proposed to be granted the claimant by any other war agency under the Act. Whenever a war agency finds that a loss affected the computation of the amount of the claimant's excessive profits determined in a renegotiation agreement or order, and to the extent that the war agency finds such amount was thereby reduced, no claim for such loss shall be allowed under the Act or these Regulations. Each war agency, in considering a claim, shall give such regard as may be proper to any reduction in income or excess profits taxes of the claimant resulting from the loss in respect of which the claim is made.

304. No claim shall be allowed by any war agency except if and to the extent that the war agency finds that the claim is (a) equitable under all the circumstances and (b) for losses incurred without fault or negligence on the part of the claimant.

305. No claimant shall be granted relief under the Act and these Regulations in any amount in excess of the amount of the net loss (less the amount of any relief granted subsequent to the establishment of such loss) on all contracts and subcontracts held by the claimant pursuant to which work,

supplies, or services were furnished for the Government during the statutory period.

307. Relief with respect to a particular loss claimed shall not be granted under the Act and these Regulations unless the war agency considering the claim finds, or, in case such loss was incurred under the contracts and subcontracts of another war agency, such other war agency finds, that relief would have been granted under the First War Powers Act, 1941, if final action with respect thereto had been taken by the war agency on or before August 14, 1945.

308. Where a claim is settled by agreement between the war agency and the claimant, the agreement shall be reduced to writing and signed by both parties and shall include an unconditional release by the claimant of all claims whatsoever of the claimant against the Government or any department or agency thereof as to all contracts and subcontracts involved in consideration of the claims. Payment, within the limits of appropriations available for such purposes, shall be made by the war agency upon the basis of the executed agreement.

309. Where a claim is not settled by agreement, the war agency shall deliver to the claimant a written statement as to the amount, if any, due on the claim, but shall make no payment of any amount so found to be due until the claimant shall have delivered to the war agency an unconditional release of all claims whatsoever of the claimant against the Government or any department or agency thereof as to all contracts and subcontracts involved in consideration of the claims.

APPENDIX B

Petitioner's claim submitted to the Navy Department for relief under the Lucas Act, together with documents in its support, is before this Court in its original form, its printing having been dispensed with by the court below (R. 32-33). Portions of this claim and supporting documents are printed here for convenient reference.

I. The claim itself reads, in part, as follows:

Edward L. Fogarty, as Trustee in Bankruptcy of the Inland Waterways, Inc., a corporation, respectfully requests relief under an act passed by the 79th Congress, being public law # 657 and entitled "An act to authorize relief in certain cases where work, supplies, or services have been furnished for the Government under contracts during the war", and in support thereof submits the following information:

A. The total loss sustained for which payment is sought is in the sum of \$328,804.42.

B. [Here follows a list of the contracts involved and the amount of loss claimed to have been sustained on each.]

* * * * *

E. Copies of each written request filed on or before August 14, 1945 with the war agency concerned for relief with respect to the losses claimed are attached hereto as Exhibit A.

F. No other written requests were filed subsequent to August 14, 1945.

G. No other relief was sought from the Government with respect to the losses

claimed other than that as may have been had in proceedings for the re-organization of the claimant under Chapter X of the Acts of Congress relating to Bankruptcy in the District Court of the United States for the District of Minnesota, Fifth Division, Case # 6976.

* * * * *

J. & K. The loss sustained was through no fault or negligence on the part of the claimant. The claimant corporation performed all of the covenants and agreements on its part to be performed with reference to the contracts hereinabove referred to. The Government, however, wrongfully withheld payments due and owing the claimant on the said contracts and failed and refused to pay the claimant's loan through the Federal Reserve Bank which the Government was obligated to do, in failing to furnish certain materials that the Government was obligated to furnish and in numerous and varied change orders directed to be made by the Government from time to time during the construction of the vessels contracted for. That various expenses were necessitated by reason of said change orders and insistence by local inspectors as to methods of handling and launching ships.

* * * * *

II. Exhibit A referred to in paragraph E, *supra*, contains a document petitioner had filed on May 18, 1944, in the proceedings in the United States District Court for the District Court for the District of Minnesota, Fifth Division, for reorganization in bankruptcy of Inland Waterways, Inc. This document, entitled "Trustee's

Objection to Allowance of the Amended Claim of the United States of America, and the Amended Counterclaim of Said Trustee," reads in part as follows:

Edward L. Fogarty, as trustee in this proceeding, hereby objects to the allowance of the amended claim of the United States of America by the court in the within proceeding as set forth in the amended proof of debt made by Frank L. Yates, Assistant Comptroller General of the United States, for and in behalf of the United States of America, made on the 22nd day of December, 1943, and in the sum of \$36,546.16.

That said objection is made on the following grounds, namely:

(1) That Inland Waterways, Inc., debtor in the within proceedings, is not indebted to the United States of America in the sum of \$36,546.16 plus interest, as certified in transcript of General Accounting Office, Settlement No. US-11000 dated December 6, 1943, affixed to its said amended proof of debt. That said trustee for its amended counterclaim herein alleges as follows:

(2) That said claimant, United States of America, is indebted to Inland Waterways, Inc., debtor in the within proceedings, and its said trustee, in the sum of \$113,875.35, as shown by a statement thereof hereto attached, marked Exhibit A and made a part hereof, and also in the additional sum of \$274,791.28, as shown by a statement thereof hereto attached, marked Exhibit B and made a part hereof, or a total sum of \$388,666.63. That there are no offsets or counterclaims to the same in favor of said United States. That such indebtedness arose through and out of cer-

tain transactions had by debtor corporation with the United States, acting through its Department of Navy, and as set-offs and counterclaims thereto, and for affirmative relief against said United States, the trustee hereby alleges the facts to be as follows:

[The factual allegations, here omitted, describe the contracts of Inland Waterways with the United States, allege full performance by Inland Waterways, and assert claims for extra work and materials, for payments withheld, for partially completed boats which had been requisitioned, etc.]

* * * * *

That by reason of the facts set forth in the foregoing Paragraphs 16 and 17 hereof, the debtor corporation, its creditors and its trustee have suffered damages as follows:

- (a) For loss of profits, \$15,000.00.
 - (b) For loss by diminution of value of such remaining property, \$120,079.28.
 - (c) For rendering it impossible to perfect a reorganization of debtor corporation as contemplated, \$25,000.00.
- * * * * *

(18) Wherefore the trustee demands judgment as follows:—

- (a) That the amended claim of the United States be disallowed.
- (b) That the amended counterclaim of the trustee be allowed.
- (c) For such other and further relief as to the court may appear just and proper.

III. Also accompanying petitioner's Lucas Act claim was a petition for compensation for requisitioned property which petitioner had filed with

the Navy Department on July 23, 1943, and which had been filed in the District Court in support of the foregoing objection and counterclaim. The body of this petition reads as follows:

To the Claims Unit, Navy Order Section:

The undersigned petitioner asserts the following claim with respect to compensation for requisitioned property:

(1) The full name and address of the petitioner is as follows: Edward L. Fogarty, Duluth, Minn., Trustee of Inland Waterways, Inc., a corporation, organized under the laws of the State of Minnesota.

(2) The property with respect to which the claim is asserted is as follows: Supplies and materials pertaining to contract NXs3309, for 40-33 foot plane rearming boats, see exhibit "A" attached hereto.

(3) The interest of the petitioner in the property at the time of requisitioning was as follows: Petitioner was appointed Trustee of said Inland Waterways, Inc., on Dec. 19, 1942, by the U. S. District Court at Duluth, Minn., in reorganization proceedings of said company under Chapter 10 of the Acts of Congress relating to Bankruptcy, Certified copies of appointment hereto attached.

(4) Petitioner alleges that he was the sole owner of such property at the time and place of the taking and that said property is free and clear of liens (except as specifically stated in paragraph 5 hereof) and that all taxes and charges assessed against said property have been paid.

(5) The petitioner knows of no other person, firm or corporation having or claiming any interest in the requisitioned property or in compensation therefor except as follows: Except as noted in Exhibit "C".

(6) The petitioner alleges that fair and just compensation for the property requisitioned is \$35,466.00, and that the basis upon which such claim is computed is as follows: Inventory and appraisal thereof by the Assistant Supervisor of Shipbuilding, U. S. N. at Duluth, Minn., and confirmed by the Bureau of Ships, Navy Department, Washington, D. C.

(7) The petitioner states that neither his claim nor any interest therein has been sold, pledged, assigned or otherwise disposed of except as follows:

(8) The petitioner claims that he is entitled to the following amount of compensation: \$35,466.00, as a fair and reasonable value of the property requisitioned, and the following additional sums incurred by petitioner in the care and conservation of said property from December 26, 1942, the date of cessation of operations at the plant of Inland Waterways, to and including May 20, 1943, the date of the final delivery of the property to Dumphy Boat Corporation of Oshkosh, Wisconsin. Such sums were necessary to comply with the demands of the Assistant Supervisor of Shipbuilding at Duluth, Minn., with reference to furnishing of guards for the protection of said property, and accommodations and conveniences for said guards, namely:

Insurance. The following policies were obtained at the request of the Assistant Supervisor of Shipbuilding at Duluth, Minn., with a loss clause payable to the U. S. Navy and were in force until said property was delivered to the Dumphy Boat Corporation with premium charges as follows:

Pacific Fire #330, \$5,000, on boats, materials and equipment-----	\$50.65
Agricultural #87485, \$5,000, on boats, material and equipment-----	50.65
Alliance #1037, \$5,000, on boats, materials, and equipment-----	50.65
Great American #6538, \$5,000, on boats, materials, and equipment-----	50.65
Millers Natl #556683, \$5,000, on boats, materials, and equipment-----	50.65
Alliance #1036, \$5,000 on boats, materials, and equipment-----	65.20
Agricultural #87486, \$5,000, on boats, materials, and equipment-----	65.20
	383.65
Fuel, to heating buildings for guards-----	474.10
Telephone service for guards-----	118.70
Water service-----	32.50
Payroll for guards, including Old Age Assistance and Soc. Sec.-----	3,746.95
Light and power services-----	346.46
Inventory clerk for checking out materials and supplies to Dumphy Boat Corporation-----	75.38
Long distance calls to Bureau of Ships, Washing- ton, D. C., and Dumphy Boat Corp., Oshkosh, Wis., in connection with requisition of property-----	10.62
Expenses for attorneys fees incurred in connec- tion with hearing on requisition in the U. S. District Court at St. Paul, Minn., and later at Duluth, Minn., together with preparation of brief on legal question involved-----	750.00
Expenses of Trustee incurred on trip to Wash- ington at the request of the Bureau of Ships for conference dealing with the disposition of said property, and trip to St. Paul for Court hearing on requisition-----	189.03
Total-----	6,125.39
Fair value of property requisitioned-----	35,466.00
Amount of claim-----	41,591.39

(9) WHEREFORE; Petitioner requests
that the amount of compensation and the
person entitled thereto be determined
according to law.

IV. Petitioner's Lucas Act claim also con-
tained fifty-nine invoices which had been filed
in support of his claim in the bankruptcy court.
Six samples of these invoices (separated here by
horizontal lines, with formal heading and certifi-
cate shown only for the first) are as follows:

(1)

INVOICE

INLAND WATERWAYS, INC.

BOAT MANUFACTURERS, MARINE MOTORS AND SUPPLIES
1000 MINNESOTA AVENUE

CUSTOMERS ORDER NO. -----

CONTRACT No. NOS.—91957.

DATE: October 29, 1942Sold to: Navy Department, Bureau of Supplies and Accounts,
Washington, D. C.

TERMS

F. O. B.

Quantity	Description	Unit Price	Amount
Invoice for fuel oil and lubricating oil on board SC670 when delivered to Navy Yard—per Receiver's Report, Supply Department, Navy Yard, New York.			
2,184 gallons	fuel oil (Price paid at Detroit, Michigan)	10.4¢	\$227.14
564 gallons	fuel oil (Price paid at Duluth, Minnesota)	8.7¢	49.07
2,748 gallons	Total		276.21
80 gallons	lubricating oil	53.0¢	42.40
			318.61

"I certify that the above bill is correct and just; that payment therefor has not been received; that all statutory requirements as to American production and labor standards, and all conditions of purchase applicable to the transactions have been complied with; and that State or local sales taxes are not included in the amounts billed."

INLAND WATERWAYS, INC.

By

S. J. BLACKMORE, President.

(2) Premium:

Overtime Sub Contractor Arrowhead Electric Company.

April 3rd 1942, to October 3rd 1942, on S. C. 671:

Radio expert 42½ hrs. @ 2.20 per hr.	\$93.50
Electrician 18 hrs. @ 1.87½ per hr.	33.75
Electrician 47½ hrs. @ 1.50 per hr.	71.25
Electrician 228½ hrs. @ 1.40 per hr.	319.90
Electrician 192 hrs. @ 1.25 per hr.	240.00
Helper 157 hrs. @ .75 per hr.	117.75
Helpers 66 hrs. @ .70 per hr.	46.20
Helpers 56 hrs. @ .60 per hr.	33.60
Total	955.95

(3) Extras as per itemized list in detail attached on Contract Nos. 91957 S. C. 670 and S. C. 671 **\$8,151.28**

(4) SC1059—Cost \$139,800.00—Progress payment Dec. 5, 1942—6% **\$8,388.00**
 SC1060—Cost \$139,800.00—Progress payment Dec. 5, 1942—11.5% **\$16,077.00**

Total **\$24,465.00**

(5) Invoice on Attached Schedule to Cover Increased Cost Due to Changes Under Contract NObs-147 in Accordance with Article 3 **\$4,486.52**

(6) Damages on Contract NXss and NXsss.
 Contract price for 40 boats \$201,000.00.
 Estimated minimum profit 7.46%. Loss of profit as estimated **\$15,000.00**